

# Competition and State Aids Bosnia and Herzegovina

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*Support to promotion of reciprocal understanding of  
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## **I Summary**

The Copenhagen European Council in December 2002 confirmed the perspective of Bosnia and Herzegovina and the other countries from Western Balkans as potential candidates for EU membership. The Thessalonica European Council sent an even stronger message to Bosnia and Herzegovina for the long-term commitments of the EU in the region, through the introduction of the European Partnership as one of the means to intensify the Stabilization and Association process. The draft European Partnership identifies short-term and medium-term priorities for action to support efforts to move closer to the European Union.

However BiH is far away from needed harmony in the area of competition and State aids? The biggest obstacles are slow reform due to the political reasons although the Single economic space in BiH is one of the most important projects of EC in BiH which we can see from the official documents and, statements and plans of EU in BiH that will be elaborated in this document. Moreover constitutional structure in BiH does not provide the institutional framework for efficient implementation of such projects nor it is the case in with the competition policy and regulators. The regulators which exist are understaffed and insufficiently financed for the tasks put in front of them although they have the political, technical and partially financial support of EC as well as acceptance from the state and entity institutions but nothing more than that.

What has to be done is to make the proper institutional structure that could provide the efficient implementation of competition policy and state aids. They should be more linked to the economic realities than to political realities. The will among the businessmen exists as well as already institutionalized economic regions which we going to talk about later. The role of international community have to be more supportive to the persons involved in the work of regulators to defend them from the political influences and to make them real independent and strong regulators.

On the end of the day the most benefit would have the honest businessmen, the consumers and of course the state budgets (read ordinary people again). Honest businessmen will become more competitive and protected, as well as consumers who will have impact on the quality image of the products and services while the state budgets will gain from the taxes collected by the honest businessmen. But in this process state institutions have to show that they respect the competition principles too through the public procurement practice according to the Law. Finally, a large set of institutions has to be established and function effectively if we really want to protect honest businessmen and consumers.

The OHR Bulldozer Committee identified this aspect as a crucial too. According to them currently there are a lot of fictitious companies throughout the country, resulting in unfair competition in the market, and substantial distortion of market conditions. Honest

businesspeople find themselves in an unfavorable position compared to those involved with fictitious companies. When the authorities discover a fictitious company, it can be removed from the register of companies only if the owner shows up for court proceedings and signs in person for deregistration. However, in the case of many fictitious companies, the owner, as registered, does not exist, and these companies stay on the register and continue to be used for further tax evasion and money laundering.

This generates unfair competition in the market, punishing honest businesspeople for paying their dues, and making their survival in the market more difficult. It might even push honest traders into the gray market in order for them to survive. The situation is distorting the market by making it possible for dishonest traders to reap the benefits of higher profit margins, or by lowering the prices of their products and making them more attractive to customers. Fictitious companies can be further used for money laundering, and possibly other criminal purposes, thus increasing crime rates in BiH. Set up a fast-track de-registration procedure, which, under special circumstances, does not require the owner's signature. This will help the FBiH, RS, and Brcko District officials to remove the existing fictitious companies from court registers, thus avoiding further use of these companies for evasion or fraud purposes.<sup>1</sup>

This Feasibility Study, published on the 18 November 2003, concluded that in the light of reforms completed up to October - November 2003 and depending on B&H making significant progress in addressing the 16 reform areas identified in the Study, the Commission hoped that it would be in a position to recommend to the Council the opening of SAA negotiations in 2004. Some of these will be elaborated in length later.

The SAA will provide for gradual alignment to EU legislation in a number of **key areas**, including in the internal market field; for gradual establishment of a free trade area with the EU; for regional co-operation with neighboring countries in fields related to the four freedoms (including free trade and the free movement of workers, services and capital) as well as for the co-operation with the EU in many other areas. One of these areas closely related to the ideal of free movement of goods is the area of competition, which is crucial for the proper functioning of both the domestic Bosnia and Herzegovina market and the Common Market of the EU. In order to prepare adequately for the implementation of any future SAA, B&H should, pay special attention to trade and internal market-related areas such as competition and state aids; the focus of this work.

According to the Commission Stabilization and Association Report for 2004 the Competition Law, which at present is compatible with Community rules, was finally enacted in December 2001. However, the law remained inoperative because Competition Council and related units at Entity level have not yet been established. In the field of state aids, B&H does not fulfill the future Stabilization and Association Agreement requirements. There is no appropriate state aids legislation and the administrative capacity in this area shall be established.

Here we will try to argument to which extent the current law is in accordance with EU standards and what else have to be done prior to claim that we have base for the

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<sup>1</sup> Bulldozer Committee Initiatives 31, 32, 33.

implementation of the Law. However there are some improvement and they will be elaborated as well as suggestions which will be presented. It is very important to note that all examples of practices in this paper are taken from OHR Bulldozer Committee and from the medias. Those examples from Bulldozer Committee are more confident than those from the media which represent speculations related to the public opinion impressions. There are no cases in front of CoC, nor those examples which are going to be mentioned should be understood in such way because it would represent pre-judication which is not the intention of this paper.

## II Stabilization and Association Process

According to the official statement from Copenhagen European Council in 1993: *“Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required” and laid down General criteria for membership: “**stability of institutions** guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; the existence of a **functioning market economy** as well as the **capacity to cope with competitive pressure** and market forces within the Union: **the ability to take on the obligations** of membership including **adherence to the aims** of political, economic and monetary union.”*<sup>2</sup>

Few things here to be underlined. First of all, the stability of institutions because the institutionalization is the first marker of the continuity and standardization.

Secondly, a functioning market economy, because EU exists on those values and BiH is directed towards them.

Thirdly, the capacity to cope with the competitive pressure in the Union is of a major importance. This is important especially in the light of newly adopted rule on the last EU Council that even a member country can be evaluated after accession and its status can be frozen if it does not have the capacity to cope with EU standards. Concerning the candidate country, the one has to have the ability to take on the obligations and to adhere to the aims of the EU. Without proper legal and institutional framework BiH can not survive even if it enters EU.

This is specially important for the competition and state aid policy on which all EU system is based.

Economic criteria require the existence and functioning of market economy as well as an ability to confront competition pressure and market force in the EU. In the context of B&H this means that prices and trade must be further liberalized and the legal system, including regulation and enforcement of property rights must be improved. To fulfill

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<sup>2</sup> European Commission. *The European Union: Still Enlarging*. Brussels, Office for Official Publications of European Communities, 2001. p. 8.

economic criteria B&H have to implement the « White Paper on Single Market », which defines the key elements in each sector of economy.

Furthermore, according to the Madrid European Council (1995) “*each candidate country should adjust its administrative structures, so that EU legislation is **not only adequately transposed** at national level, but is also **implemented effectively through appropriate administrative and judicial structures**, as a prerequisite of the mutual trust required by EU membership.*”<sup>3</sup>

Therefore, concerning the precise institutional framework needs institution which would implement effectively EU legislation. Adopting the laws and creating institutions with few employees and without budget will not be enough any more.

The Helsinki European Council in 1999 added that candidate countries “**must share the values and the objectives** of the European Union as set out in the Treaties”.<sup>4</sup>

A more detailed vision of the path to European accession for BiH and the Western Balkans road to Europe can be found in the “Bosnia and Herzegovina Country Strategy Paper 2004 – 2006”.

The values and objectives in competition are set in the Treaties but EU set the goal of approaching the competitiveness level of US by 2010. Each part of current of future EU has to be prepared for that. BiH as well even just a spot in EU policy.

The Stabilization and Association process is a framework in which a new contractual relationship (Stabilization and Association Agreements) and an assistance program (CARDS) help each country to progress, at its own pace towards EU membership. The European Commission set out this ambitious vision for the region’s development in May 1999. This is based on: the need for assistance programs and contractual relations, which although anchored to a common set of political and economic conditions, are flexible enough to allow each country to move ahead at its own pace, to accommodate a range of situations from post-conflict reconstruction and stabilization to technical help with matters such as the approximation of legislation to the core elements of the EU *acquis*. Following the Feira Council of June 2000, which confirmed that the EU goal is the fullest possible integration of these countries into the economic and political mainstream of Europe, the 24 November 2000 Zagreb Summit set the seal on the Stabilization and Association process by gaining the region’s agreement to a clear set of objectives and conditions. In return for the EU offer of a prospect of accession on the basis of the Treaty on European Union (TEU) and the 1993 Copenhagen criteria, and an assistance program to support that ambition, the countries of the region undertook to abide by the EU’s conditionality and participate fully in the Stabilization and Association Process. They foresee the establishment of a free trade area with the EU and set out rights and obligations in areas such as competition and state aid rules, intellectual property and establishment, which will allow the economies of the region to begin to integrate with the EU’s. These rights and obligations will set the agenda towards the implementation of the

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

competition policy and in the area of state aids because those two areas can not be fully arranged without the regulations in other linked areas. The conclusion of such Agreements represents the signatories' commitment to complete over a transition period a formal association with the EU, tailored to the circumstances of each country but based on the implementation of the same core obligations<sup>5</sup>. Negotiations are conducted individually, and the pace of each negotiation depends on the degree of preparations by each candidate country and the complexity of the issues to be resolved. The negotiations are based on the principle that each candidate must adopt the entire set of existing rules and legislation, so called *acquis communitarie* that is not negotiable. That mean that candidate country can not negotiate on the substance of *acquis* ( what is needed to be done) but only on the timeline and how it is going to be done. Candidate countries commit themselves to implement it and enforce it. Actual negotiations are limited to those parts of *acquis* that candidate countries have indicated as difficult to implement in the moment of accession, and for which they ask for additional time through transitional agreements. However, it is very important to underline that "each candidate is judged on its own merits, rather than according to a pre-ordained timetable".<sup>6</sup>

## **1. Stabilization and Association Agreement**

The EU Council of Ministers, at a session held in June 1998 in Luxembourg, made a special declaration on the position of Bosnia and Herzegovina in Europe, which tried to encourage efforts for fulfilling the accession conditions. One of the first lines in declaration reads: The European Union believes that B&H is on its way to a larger integration with Europe and European structures" and "European Union confirms that B&H belongs to Europe"<sup>7</sup>.

According to the report from the Commission to the Council on the preparedness of Bosnia and Herzegovina to negotiate a Stabilization and Association Agreement with the European Union for 2003<sup>8</sup>, SAA would include provisions on the gradual approximation of existing and future B&H legislation to that of the Community. From B&H is expected to ensure that from the date of signing SAA , approximation would begin to extend to all elements of the Community *acquis* referred to in the agreement. The part that is interesting for this research is following:

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<sup>5</sup> European Commission, External Relations Directorate General – Directorate Western Balkans. Bosnia and Herzegovina, Country Strategy Paper 2004 – 2006. p. 3.. [http://www.euroinfo.ba/docs/bih\\_csp\\_2002-2006.pdf](http://www.euroinfo.ba/docs/bih_csp_2002-2006.pdf)

<sup>6</sup> European Commission. *The European Union: Still Enlarging*. p. 10.

<sup>7</sup> *Bosnia and Herzegovina and Euroatlantic Integration*. 9. Biblioteka, The Possibilities and perspectives for development, Sarajevo, 2001. p. 31.

<sup>8</sup> Commission of the European Communities, Brussels, 18.11.2003, COM(2003) 692 final, <http://www.delbih.cec.eu.int/en/index.htm>

*“This would apply particularly to **key areas** of internal market legislation and trade. B&H would thus have to agree binding deadlines for harmonization in areas such as: **competition**, intellectual, industrial and commercial property, public procurement, standards and certification and consumer protection.”<sup>9</sup>*

This quote shows us few things. First of all, it underlines that the competition is the main of the **key** areas for internal market. Further, it continues to tight the implementation of EU standards in those areas to the binding deadlines which is reserved only for the exceptionally important legal reforms who are the precondition for the further steps forward. Finally, the interaction between the competition policy and other segments of reforms as public procurement, standards and certification and consumer protection is recognized as “package project”. This is very important because competition policy can not be implemented and competition regulators can not function without the backing laws and agencies as those mentioned above.

Furthermore, a very good analysis is expressed in the same report with the focus on effective and consistent implementation and enforcement of Law on Competition, which is very important due to the constitutional structure of Bosnia and Herzegovina.

*“Although B&H has already expressed a willingness to approximate to, implement and enforce EU legislation, its ability to do so is complicated by the division of powers between State, Entities and cantons. To implement properly a SAA, B&H would need to ensure an **adequate mechanism** for co-operation and co-ordination between the Entities in areas of responsibility not vested in the State. In each case there would need to be a unified position vis-à-vis the EU. In terms of implementation and enforcement, this would need to be both effective and consistent in all parts of B&H.”<sup>10</sup>*

The crucial point here is “adequate mechanism”. Without this in competition policy framework it would be just one more Law on the paper. However, this few remarks that we can find in this EC report give us the optimism that this “package project” will be implemented more seriously than we think right now.

Moreover, concerning competition policy in B&H, some of the EU political values were transformed into the conditions, setting the future agenda for changes and improvements in Competition Law as well as creation of the Law on State aids :

*“Under a SAA, B&H would refrain from any measures adversely affecting fair competition. In particular, it would prohibit: (i) all agreements between undertakings and concerted practices which prevent, restrict or distort competition; (ii) abuse by one or more undertakings of a dominant position, (iii) any public aid which distorts or threatens to distort competition by favoring*

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<sup>9</sup> Commission of the European Communities, Brussels, 18.11.2003, COM(2003) 692 final, <http://www.delbih.cec.eu.int/en/index.htm> chapter 3.5. Approximation, Implementation and Enforcement of Legislation

<sup>10</sup> Ibid. chapter 3.5. Approximation, Implementation and Enforcement of Legislation



*certain undertakings or certain products. B&H would commit itself to ensure transparency in the area of state (i.e. public) aid inter alia by establishing a comprehensive inventory of aid schemes and by reporting annually on the total amount and the distribution of the aid given. It would also provide, upon request, information on particular cases.”<sup>11</sup>*

The implementation of competition legislation has been on the B&H agenda since early 2000 when the Road Map for BiH advocated the adoption of a Competition Law. The law was finally enacted in December 2001. Since then till March 2004 the law remained inoperative because the Competition Council and related units at Entity level were not established. Even though the institutional structure is in process of building we can say that the law is still inoperative because CC is concentrated on the legal improvements of the law and staffing. There are no real impact of the law in business society. Beside this law only Law on Consumer protection was adopted in 2002, but the Consumer Protection Council stayed partially filed just with Consumer Protection Associations until September 30th when the members from state agencies were incorporated.

Concerning the state aids the situation is even worse. BiH is far away from SAA requirements. The existing competition law contains no provisions on state aid. No aid is given from State level too. Nevertheless, the Entities provide public assistance either to enterprises or sectors. So far there is no authority overseeing this assistance, no inventory list of aid nor systematic reporting.

The report on the progress made in sixteen priority areas from the European Commission Report to the Council of Ministers of the European Union on the feasibility of negotiations between Bosnia and Herzegovina and the European Union on a Stabilization and Association Agreement presented on July 22<sup>nd</sup> 2004<sup>12</sup> puts more light on concrete details on developing single economic space and especially competition council. Furthermore it recognizes for the first time the necessity for the Competition council and its role in single economic space policy to build cooperation and interaction with other legal projects and emerging agencies as Consumer Protection Council, Agency for Standardization, Intellectual Property and Measures, BiH Agency for Statistic, Agency for Indirect Taxation, Veterinarian Agency, Single Register of Transaction Accounts, Single Business Registration System and of course, BiH Supreme Court. The competition council can exist but it cannot function without the support of other institutions, which are necessary for the implementation of competition policy and EU standards as well. How we can achieve transparency and the benefit of consumers if there is no active role of Consumer's Protection Council? Is it possible for local businessmen to be competitive if there is no one who can issue them certificates on product standards and licensees? Moreover would it be possible to analyze the economic data to find out are there any distortions of the market with some new mergers, takeovers or agreements without

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<sup>11</sup> Commission of the European Communities, Brussels, 18.11.2003, COM(2003) 692 final, chapter 3.5.1. Competition, <http://www.delbih.cec.eu.int/en/index.htm>

<sup>12</sup> Report on the progress made in sixteen priority areas from the European Commission Report to the Council of Ministers of the European Union on the feasibility of negotiations between Bosnia and Herzegovina and the European Union on a Stabilization and Association Agreement presented. Sarajevo July 22<sup>nd</sup> 2004. Directorate for European Integrations of BiH. [www.dei.gov.ba](http://www.dei.gov.ba)

Agency for Statistic. Would it be possible to follow the financial flows, irregularities in taxation, transaction frauds validity of registered companies, all of which very important to decide on the impact on the distortion of competition, without Agency for Indirect Taxation, Single Register of Transaction Accounts and Single Business Registration System? Finally, how to provide the right to appeal on CC decisions without well organized Supreme Court of BiH as final instance. The answer to all of those questions is of course NO, without all of them competition law will stay just on the paper.

Therefore, in the Priority area 15 of the Report<sup>13</sup>: Developing the BiH single economic space, the priority actions are defined. First of all “Establish the Competition Council.” Secondly, introduction of the provisions on the mutual recognition of products in the legal order of BiH, as well as, implementation of a consistent and effective public procurement regime throughout the country. Thirdly, a special importance is dedicated to obligation of BiH to remove all duplicate licenses, permits and similar authorization requirements to allow service providers (including financial institutions) to operate throughout BiH without having to fulfill unnecessary administrative requirements. This is very important for the competition because it create equal starting opportunities. The last but not the least, creation of a single business registration system that should be recognized throughout BiH would be of great importance for unifying single economic space.

At the same time the Summary of the Report underlines that:

*“Creation of a single economic space is one of the **most** significant economic preconditions for Bosnia and Herzegovina to get closer to the EU, as identified in the Feasibility Study, Report on Stabilization and Association Process for 2004, and European Partnership. Barriers to access to the market are barriers to economic development in Bosnia and Herzegovina, therefore it is necessary to have legislation that will enable free movement on the market. Functioning of the Competition Council, Entity Offices of Competition and Consumer Protection and Council of Consumer Protection and Public Procurement Agency and Procurement Review Body will all contribute to further integration of the market. Furthermore, specific areas such as single business registration and licensing and authorization procedures are all tightly integrated into this. So far, significant progress has been achieved in this field, in terms of creating legal framework as well as institutional development.”<sup>14</sup>*

What is extremely important, summary again underlines the role of CoC, OCCP's in the creation of single economic market as **most significant precondition** for BiH on the road towards EU. More over the Public Procurement Agency and Procurement Review Body are introduced as a support institutions with the reason. If state institutions do not start to implement competition principles set in the Law on Competition on their own procurements they will not have the support of businessmen in the overall process of introducing competition policy. Therefore, the Law on Public Procurements have to pass

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<sup>13</sup> Ibid

<sup>14</sup> Ibid. p. 37.

the Parliament and following Agency and Review Body have to be established as soon as possible. This is an ongoing process for few months.

It could be argued that this development is only on the paper. The laws have been passed through the BiH Parliament, and agencies have been established on Council of Ministers but substantive changes have not yet occurred. Therefore, from the methodology point of view it is real refreshment to have some kind of “Indicators” which we can point to in deciding whether there were some development or not. As far as Competition policy is concerned the indicators were marked. In spite of very general indicators, which are better than none, very detailed evaluation of progress achieved during 2004 brings even more light to the position of BiH Competition Council and the role of Competition policy in creation of single economic space. The progress achieved is following<sup>15</sup>:

- Establish and make operational the Competition Council in appropriate premises. Appoint councilors. So far Competition Council has been established and made completely operational. Councilors have been appointed and premises have been provided.
- Establish and make operational Entity Offices of Competition and Consumer Protection. Entity Offices of Competition and Consumer Protection in F BiH and RS are all staffed. Appointment of members of the Council for Consumer Protection is underway. In F BiH it is completed while in RS one place remain unfilled.
- Implement a consistent and effective public procurement regime throughout BiH by adopting a State-level Law on Public Procurement and related implementing regulations and by establishing the Public Procurement Agency and the Procurement Review body. As far as public procurement is concerned, Law on Public Procurement is adopted and sent to the Parliament for the further urgent adoption. It seems that it will have to go in Inter-Houses Committee for further arranging.
- Demonstrate action to remove all duplicate licenses, permits and similar authorization requirements, including in the area of financial services. The Agency Law on Insurance is adopted. Adoption of the Law is followed by the entity laws on insurance. With the aim of creating similar legal acts in the entities, a commission composed of representatives for entity ministries has been set up aiming at preparing package of laws on Insurance for adoption.
- Foster the development of standards, accreditation and metrology and support the establishment / upgrading of conformity assessment infrastructure. Adopt and implement laws establishing the institutes for standardization, metrology and intellectual property. Laws on establishment of Institutes for Standardization (headquarters in Banja Luka), Institute for Metrology (headquarters in Sarajevo) and Institute for Intellectual Property (headquarters in Mostar), which were one of the unfulfilled requirements of Road Map, have been adopted in both houses of the Parliament of BiH. Laws on establishment of Institutes for Standardization and Institutes for Metrology have been adopted in different contexts, and will be

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<sup>15</sup> Ibid. p.38.

further harmonized by a parliamentary commission. As far as activities of the existing Institutes are concerned, there were 6605 of BAS (Standards of BiH) published, and 1707 of BAS are in the process of preparation. All obligations of the Institutes with regard to membership in various European organizations for standardization have been fulfilled on time. In order to overcome problems of free trade, Institute for Standardization, Metrology and Intellectual Property are expected, with corresponding institutions in surrounding countries, to sign agreements on conformity assessment, acceptance of results etc. Until now, a treaty was signed with Croatia. Institutes advanced the entire system of accreditation, which is important for free circulation of products. Institute for Accreditation was established in 2000. Institute for Accreditation by now accredited 20 bodies for conformity assessment: 10 testing laboratories, 3 calibration laboratories, 5 inspection bodies, and there are 2 more bodies for conformity assessment that are in the different stages of the process of accreditation. Implementation of the conditions set by the Law on Accreditation and regulations of European Accreditation organization (EA) is in the final phase, including establishment of Advisory Council, Accreditation and Appeal Committee and Technical Committee).

- Appoint a director to the BiH Institute for Standardization. This task is still not fulfilled due to the political reasons.
- Ensure de iure Statewide recognition / acceptance of technical specifications and conformity assessment results. Aiming to regulate single procedure for import, export and trade of drugs in BiH and adoption of single standards in terms of quality, safety and effectiveness of drugs, Ministry of Civil Affairs formed Working Group for drafting the state Law on Agency for drugs. The working group had 13 meetings so far and the law is in the consultation phase.
- Create a single business registration system that is recognized throughout BiH. Parliament of BiH has adopted framework Law on Business Registration in BiH on August 3<sup>rd</sup> this year. The establishment of new, fast, efficient, transparent and single registration system which is recognized throughout BiH will shorten the time that is necessary to register company in BiH, improve the preconditions for foreign investments and improve competition. Those with the connections in administration will not be able to use it for their competitive advantage any more. This project was supported by the World Bank and DFID. It is expected from entity and Brcko District to follow the state example. The system should become operational by December 31<sup>st</sup> 2004. Furthermore, the Single Register of Transaction Accounts became operational on July 5<sup>th</sup> 2004. It will be consisted of: account no; company name, address, organizational structure, ownership structure, eventual change in status, identification number, date of opening of the account, type of account, date of the first transaction, account status (active, blocked), territorial belonging (entity, etc...), the name of the bank where the account is opened. Only three Main Stations of the Register in Sarajevo, Mostar and Banjaluka have the authority to issue the information about the status of companies and their accounts. This is of great importance for the creation of single economic space and provides for the research capabilities for the future investigations of CoC and OCCP's in concrete cases.

According to this, the future priorities and strategy was made.<sup>16</sup> It is represented in creation and further strengthening of single economic space. This will directly effects functioning of market economy as well as fulfillment of II Copenhagen criteria. Especially two more preconditions are to be fulfilled in near future.

Firstly, implementation of a consistent and effective public procurement regime will result in transparency of spending part of the budget means. This will lead to decrease in the number of frauds in the procedure of public procurement regime, as well as prevention of corruption. Furthermore, all interested businesses will be enabled to equally enter the market in way of public procurement, which will lead to fair competition in the market.

Secondly, basic principles of mutual recognition of products that should be fulfilled so that the products recognized in one part of the country can freely move in the whole country. Once products are imported in Bosnia and Herzegovina, they should be allowed to move freely within the whole territory of the country.

Finally, and maybe the most importantly, the barriers to access to the market represent the barriers for economic development in Bosnia and Herzegovina, therefore it is necessary to have legislation that will enable free movement of goods on the market.

Establishment of Agency for General Food Safety is especially important because under its establishment, together with State Veterinary office and Plant Protection Authority of BiH, will gave opportunity to traders and producers, and especially local to be more competitive since their goods will have official verification of quality.

## 2. EU assistance for competition policy

The Country Strategy Paper (CSP) provides a strategic framework in which EC assistance will be provided in the period 2000-2006.<sup>17</sup> It sets out EU co-operation objectives, policy response and priority fields of co-operation based on a thorough assessment of the partner country's policy agenda and political and socio-economic situation. The multi-annual indicative program (MIP), attached to the strategy and forming an integral part thereof, sets out the EU response in more detail, highlighting program objectives, expected results and conditionality in the priority fields of co-operation for the period 2002-2004. The indicative financial allocation for CARDS assistance for BiH for the period 2002-2004 is 172,4 million euros under the national program and 23 million euros under the Regional Program. Bosnia and Herzegovina is a full participant in the Stabilization and Association Process (SAP).

As far as Competition policy and State aids is concerned, CSP recognized that the SAA include those **core elements**, which are at the **heart** of the EU single market. "Through

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<sup>16</sup> Report... p. 39.

<sup>17</sup> European Commission, External Relations Directorate General – Directorate Western Balkans. Bosnia and Herzegovina, Country Strategy Paper 2004 – 2006. [http://www.euroinfo.ba/docs/bih\\_csp\\_2002-2006.pdf](http://www.euroinfo.ba/docs/bih_csp_2002-2006.pdf)

free trade with the EU and the associated disciplines (competition and state aid rules, intellectual property etc) and rights (e.g. establishment), this process will allow the economies of the region to begin to integrate with the EU's.”<sup>18</sup>

It is important to note here once again the importance of Competition policy concerning the creation of single economic space in BiH as the core elements in the heart of EU single market. As we can recall the countries have to adhere to the goals of EU. If the competition is core and heart of EU the importance is obvious.

In support to that statement a very detailed plan is set in the sense of EU assistance:

*“Technical assistance, training and investment will be provided to implement this strategy which will cover a national plan for the adoption of the Acquis, approximation of laws, strengthening of state level institutions and regulatory agencies for enforcing such laws (such as the National Institute for Standards, the BiH Competition Authority and the BiH Consumer Protection Council) and raising public awareness. Monitoring and implementing this process through the Ministry of European Integration, CTF working groups, Internal Market Monitoring Groups and public/private advocacy groups will also be supported. Assistance will be directed to priority areas identified in the White Paper as well as supporting improvements in the business environment.”*<sup>19</sup>

This kind of concrete support is very welcomed especially the decisiveness of EC in this respect. The country like BiH without political will to reach the consensus upon its own future concerning basic economic preconditions need to be pushed forward by the conditioning and expressing importance and willingness of EC to proceed further with the reforms.

As an indicator of achievement are set here too: (a) the establishment of a legal, regulatory and institutional framework consistent with that of the EU will be established in those areas benefiting from EC assistance, (b) a substantial increase in inter Entity trade have to be acknowledged, (c) active monitoring and enforcement to ensure the proper working of the single economic space has to be established. However, a true conditionality was recognized too: Laws compatible with EU legislation must be adopted at the appropriate level in the following areas: public procurement, competition, intellectual property and foreign direct investment. Right now all of those are in process of drafting law or drafting the amendments and changes.

However, **adequate** financing is one of the crucial parts for the functioning of the new institutions and it must be included in the State budget for existing or future institutions required to ensure the proper functioning of the single economic space.

The project «Single Economic Space in Bosnia and Herzegovina - Phase II» coordinated by the Delegation of European Commission in BiH focused on key legal and institutional

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<sup>18</sup> Ibid. p. 4 – 5.

<sup>19</sup> Ibid. p. 9.

aspects in fulfilling the economic part of Copenhagen Criteria's. Those conditions who represent the fundamentals of EU economic system. There is attempt to move BiH towards EU integration through a gradual approximation to the *Acquis Communautaire*, starting from its very base.

There are three main dimensions of that project – Competition; Consumer Protection and the Free Movement and Safety of Industrial Products – implementation of which is very ambitious goal. Each of them provides a number of benchmarks through which improved economic growth and self-reliance can be evaluated. Those benchmarks are the creation of a competition culture, followed by the consumer protection, which is supposed to lead to dynamic and rule-framed free market. The most importantly is that this projects have to develop and grow in coordination and interaction which is the suggestion from the EC experts:

*“While each of the three project components have its own distinctive character, it is important to bear in mind that they are part of a common drive towards a single economic space. To work effectively towards this goal, they need to operate both as a coherent and unified project, but also to work in close association with related projects, programs and agencies. At a more technical level, the three project components share common ground largely in relation to the interests of the consumer: notably under the broad principle that the consumer should be protected against goods and services detrimental to his/her health and property (bona fide). In preparing for European integration, this will also have its impact on project effectiveness, the pace of delivery and the difficulties encountered en route. Component I, by protecting competition as an instrument of the free market, by implication, safeguards the consumer against abuse of market dominance and/or unfair restrictions of competition.”<sup>20</sup>*

When the policy and timeline is set, financial construction has to be adequate to support the implementation as well as to achieve the goals of the project. The total planned CoC budget for the year 2004 was calculated by the project to be 906.835,11 KM. As to necessary initial office equipment for the CoC, the plan foresees 60.000 EUR to be financed by the EC Delegation of the EU for the CoC and the OCCPs together, whereby a specification has been elaborated by the project for the necessary equipment for all three institutions.

The preparations for the drafting of Competition Law were undertaken during 2000 and 2001 involving university professors, representatives of administration authorities, representatives of consumer protection associations and EC delegation in BiH.<sup>21</sup> A similar group was involved in the drafting of the Law on Consumer Protection, which was adopted June 25<sup>th</sup> 2002 in BiH Parliament.<sup>22</sup> However, it has to be underlined that

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<sup>20</sup> Hölzler Heinrich. *Competition Policy and Law in Bosnia and Herzegovina*. European Communities, Sarajevo, 2004. p. 5.

<sup>21</sup> Interview with Mr. Zoran Popovic, President of the Directory Board of the Association for the Consumers Protection of Republic Srpska, September 2004.

<sup>22</sup> The Law on Consumer protection *Official Gazette of BiH* , October /02.

both laws (Competition Law and Consumer Protection Law) were the conditions in the economic part of the Road Map for Bosnia and Herzegovina, which means the steps to be taken by BiH to prepare a launch of a feasibility study.<sup>23</sup> Although the Competition Law was adopted in BiH Parliament in 2001<sup>24</sup>, first on the session of the House of Representatives on April 19<sup>th</sup> 2001 and after it House of Peoples on October 23<sup>rd</sup>, Delegation of European Commission in Bosnia and Herzegovina hired an expert team made of foreign and local experts in 2003 and 2004 to evaluate the current Competition Law and to suggest the necessary steps to improve it under the Competition Policy Project. The evaluation was led by EC expert in Competition Policy, Mr. Heinrich Hölzler. The evaluation of the Competition policy and Competition Law have marked the following conditions<sup>25</sup>:

- The BiH antitrust law must be compatible with EU competition rules and regulations for obvious reasons;
- The BiH antitrust law must be simple in its structure, transparent and easy to apply in practice;
- The substantive rules must be in the right proportion with the development stage of the economy;
- The law must be flexible in its structure, giving the antitrust authority sufficiently leeway to intervene under the rule-of reason concept only in cases where the results of competitive behavior or structural changes are unacceptable for a market economy;
- The civil servants applying the BiH antitrust law must be well trained and must collect experience in practice before administrative fine proceedings can start and prohibitions be ordered.

In order to fulfill the basic preconditions for the establishment of a “workable competition policy approach”, establishment of the necessary legal environment and an infrastructure of administrative bodies able to carry out the successful implementation of the law, a logical chain of development stages arises:

- Under the current BiH competition law, the CoC and the two OCCPs must be established. All necessary organizational and legislative preparatory steps have already been taken to realize this step in the immediate future;
- Once the CoC has been established and started its work, it will table legal drafts for the completion of the legal framework for a functional antitrust law, compatible with the EU competition rules, transparent, and easy to apply;
- Parallel with the establishment of the CoC and the OCCPs, substantial training and education activities in the field of competition policy and law will be organized and carried out by our project to make sure that by the time of the adoption of the final set of legal rules and regulations the respective civil servants will be able to start carrying out the implementation of the law and regulations;

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<sup>23</sup> *Information on the Fulfillment Status of EU Directions*. Projection of the Ministry for European Integrations BiH, November 22<sup>nd</sup> 2001.

<sup>24</sup> *Competition Law*. *Official Gazette of BiH* no. 30/01, December 18<sup>th</sup> 2001.

<sup>25</sup> Hölzler Heinrich, p. 7.



- Also parallel with the first steps, public awareness campaigns will be carried out by the project to make sure that the business community and its legal representations are aware of the specific rules and regulations adopted;
- It is advisable that also the academic society in BiH decides to make competition policy and law imperative curricula at the legal and economic faculties of the major universities.

This project and evaluation on which the further development of competition policy is based was financed and led by Delegation of EC in Bosnia and Herzegovina. Therefore we can say that EC provided strong assistance in Competition Policy building in BiH as well in Administrative Institutions building who are supposed to implement and promote Competition policy and Competition Law. This assistance was financial but also political, expert and advisory.

### **3. Competition and state aids**

#### **a. Competition**

##### **a.1. Legal Framework**

The Legal framework of Competition policy is set in the BiH Competition Law as well in the Law on Trade of Republic Srpska<sup>26</sup> and Law on Trade of Federation BiH<sup>27</sup> in the part of consumer protection and competition. Furthermore, in Article 25 of BiH Competition Law an obligation for Entities in BiH is set: *“Commitments of the Entities in the Implementation of the Law. Within three months of entry into force of this law the entities shall bring their trade laws in line with this law and establish and make operational their OCCPs.”*<sup>28</sup> However, a joint task group already made the draft amendments of the Law, which will be considered in this paper too. General provisions in Article 1 underlines:

*“This law shall establish the principles and establish the competent bodies aiming at the maintenance and stimulation of economic competition to ensure the free determination of prices for goods and services through competition between legal and natural persons who, whether public or private, by carrying out an economic activity, are active in manufacturing and trade in goods and services on a regular, periodic or irregular basis, including governmental bodies empowered to create, restructure or manage such persons (hereinafter: economic subjects).”*

<sup>26</sup> Official Gazette of RS no. 16/96 , articles 34. – 61.(later amended)

<sup>27</sup> Official Gazette of F BiH no. 2/95, amended 96 and 2001, [www.fbihvlada.gov.ba/indexx.html](http://www.fbihvlada.gov.ba/indexx.html)

<sup>28</sup> For the purpose of this paper we will use the English translation of Competition Law provided in Hölzler Heinrich's - *Competition Policy and Law in Bosnia and Herzegovina* due to the fact that it represent only official translation of the Competition Law conducted by the official EC translator. However, the author of this paper will not take the responsibility for the misinterpretation of the Law, which might be caused by mistakes in translation from the original.

The proposal of the draft amendment Article 1 suggest that the Law should establish “*the principles and the competent authorities*” aiming at “*the control and promotion of economic competition between legal and natural persons*”. The law can establish the principles and the legal framework as well as to provide the adequate authorities but to establish the competent bodies, it is the role of the government. This suggestion is logical because the project was made in order first to promote and than to gain control over competition processes. Moreover, there were no competition to maintain and stimulate. Law itself is just the first step, and base to build the Competition Policy and competition culture.

Moreover, the Application in Article 2 confirms that

*“The provisions of this law shall apply to economic subjects in the whole territory of Bosnia and Herzegovina (hereinafter: BiH) and to all their intended or effected prevention, restriction or distortion of competition within its territory, or a part of it, including activities carried out abroad and having effects on the BiH territory.”*

While the draft amendment adds: “*The law also applies to economic activities or structural transactions carried out abroad and having effects on the BiH territory.*” Which is an new element that put the Law in accordance with the EU legal practice based on “the effect doctrine” or “theory of the effect” meaning that all malpractices in competition which effects the competition in “common EU market” or “market in EU member states” will be prohibited no matter where the malpractice appeared or by which economic subject out of EU. This “effect doctrine” was supported by the numerous decisions of the European Court of Justice in the decisions in cases: *Woodpulp* 89/85, and *Ahlstrom Osakyhtio v Commission* (1988) ECR 5193 as well cases 89, 104, 114, 116, 117 & 125-129/85<sup>29</sup>. Therefore, from the first amendments we can see that the current Competition Law is supposed to be changed in accordance with EU practice. Moreover, in Article 3 - Forms of anti-competitive practices the old terminology as “Practices of economic subjects which may lead to the prevention, restriction or distortion of competition are contracts, certain contractual clauses, explicit or implicit agreements, concerted practices, decisions of associations of businessmen and other associations (hereinafter: agreements); monopolistic practices; and concentration.” are replaced by new one more updated and in accordance with current EU legal terminology and theory of competition policy: Agreements in article 4, Abuse of dominant position in article 5 and Control of Concentrations.

## **a.2. Restriction of competition**

### **Agreements**

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<sup>29</sup> More in Vukadinovic Radovan, *Pravo Evropske Unije (EU Law)*, Megatrend, Beograd 2001 p. 253. and Parry and Dinnage, Parry and Hardy *EEC Law*, London 1981. p. 314.

Current Competition Law puts the agreements on the first place as a restriction of competition in Article 4:

*“1 Prohibited are all agreements between economic subjects, associations and concerted practices relating to:*

- a) directly or indirectly fixing of purchase or selling prices of goods and services sold publicly or of any other trading conditions placing users of goods and services (hereinafter: consumers) at a disadvantage;*
- b) the limitation and control of production, of sale and purchase of goods, of rendering or using services, of markets, of technical development or investment;*
- c) the division of markets or sources of supply of goods and services;*
- d) the application of dissimilar conditions to equivalent transactions with other trading partners, thereby placing them on a competitive disadvantage by limiting their access to the market or excluding them from the market;*
- e) the conclusion of contracts, subject to the acceptance by the other parties of additional obligations that by their nature or according to commercial usage have no direct connection with the subject of such contracts.”*

In the draft amendments Article 4 is more detailed and explanatory which provide the better understanding for interested subjects. Furthermore, previous paragraph c) is defined under paragraph b) which is understandable. Moreover in the introductory part it brings a new term “substantial part” which is related to the concept of “relevant market” that lacks the current law as well as draft law, but anyhow it is more concrete than in the current law.<sup>30</sup>

Concerning the price fixing in Article 4 a) LoC, the important condition is that such practice puts the consumers at disadvantage. Example: Regulatory Agency for Communications (RAK) welcomed the intention of three telecom operators in BiH to decrease the price for getting fixed line. It seems that all three of them (BH telecom, HT

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<sup>30</sup> Article 4 – Agreements. 1. All agreements between economic subjects, decisions by associations of economic subjects and concerted practices which have as their object or effect the prevention, restriction or distortion of competition within BiH or a substantial part thereof shall be prohibited, in particular those which:

- a) directly or indirectly fix purchase or selling prices or any other trading conditions;*
- b) limit or control production, markets technical development or investment; share markets or sources of supply;*
- c) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
- d) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of such contracts.*

Mostar and Telecom Srpske) have the same strategy. It is concerned practice but RAK considered it as a benefit for the consumers.<sup>31</sup>

The example for Article 4 b) could be the case of meat producers and importers, but the questionable part is that the BiH Law on Custom Tax is the reason for distortion of market, not agreement. According to the Law, local meat factories, can not import a meat before they buy a certain amount of locally produced meat.<sup>32</sup> This could be understood as a limitation of purchase of goods and using services although it could be considered as smart political and economical decision to support local meat producers. It could be also considered as a state aid because the government provides the opportunity for the local producers to sell their goods first in the same time putting them in better position. These kinds of doubts have to be more precisely defined in the future laws on Competition and State aids.

As an example of Article 4 c) we have the situation that the companies are still directed to use the electricity supply from their part of territory.<sup>33</sup> On March 11<sup>th</sup> this year, the unique electro-energetic system was established after ten years. From this date there are no technical obstacles for the electric supply company from one entity to provide electricity to some factory in other entity. Unfortunately the legal obstacles remained as well as practice.<sup>34</sup> But it is something that CoC will have to deal with through the improvement of legal frameworks or solving cases.

An interesting case that appeared in media few months ago is the application of dissimilar conditions to trading partners in article 4 d) by the Heidelberg Cement Factory in Kakanj. They were accused for selling cement to construction companies in Sarajevo for 12 percent higher price than to the companies from other cantons.<sup>35</sup> The chamber of Commerce of Sarajevo Canton reacted strongly but the epilogue remained unknown, although it would be the perfect case for CoC.

In paragraph 2 Article 4 of the new draft changes of LoC we can find one good solution that is in accordance with new EU standards since Regulation 1/2003 was enacted may 1<sup>st</sup> 2004. stating that any agreements or decisions prohibited pursuant to article 4 are automatically void. Further improvements is in paragraph three which exempts some cases that are in benefit of economic progress.<sup>36</sup>

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<sup>31</sup> Oslobođenje, May 31<sup>st</sup> 2004. [www.oslobodjenje.com.ba](http://www.oslobodjenje.com.ba)

<sup>32</sup> Oslobođenje, August, 12<sup>th</sup> 2004. [www.oslobodjenje.com.ba](http://www.oslobodjenje.com.ba)

<sup>33</sup> There are three electricity supply companies in BiH made during the war by splitting one state company on three parts that functioned by now on the three territories, controlled by three armies.

<sup>34</sup> Nezavisne novine, October 12<sup>th</sup> 2004. [www.nezavisne.com](http://www.nezavisne.com)

<sup>35</sup> Nezavisne novine, June 1<sup>st</sup> 2004, [www.nezavisne.com](http://www.nezavisne.com)

<sup>36</sup> “2.Any agreements or decisions prohibited pursuant to this Article shall be automatically void.  
3.Agreements, decisions or concerted practices in the sense of paragraph 1 of this Article are not prohibited if they contribute to improving the production or distribution of goods within BiH or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit.”

In support to the previously mentioned trend of amendments towards more accordance with current EU practice is the move to delete separate part concerning the Exceptions from the prohibition of anti-competitive practices in article 7 as well as The Procedure for exception that should become part of regulation on agreements 4. 3). But in the paragraph 4 and 5 we can find something, which is not in accordance with the new DG Comp approach, although the Law itself call on the experience of EC and DG Competition.<sup>37</sup> According to the new Regulation 1/2003 that was put in force on May 1st 2004 companies will no longer notify their agreements routinely for clearance.<sup>38</sup> It could be found too in the speech given by Philip Lowe, Director General of DG Comp EC “The notification system goes”.<sup>39</sup>

### **Abuse of a dominant position**

Antitrust violations or previously called cartel agreements and abuses of dominant position of undertaking which occupy dominant or monopolistic positions on the relevant market are treated in Article 5 of the Competition Law still under title Monopolistic practices:

1. *Prohibited is any abuse by one or more economic subjects having a monopolistic or dominant market position relating to:*
  - a) *directly or indirectly imposing unfair purchase or selling prices of goods and services or other unfair trading conditions;*
  - b) *the limitation of production, markets or the technical development to the detriment of consumers;*
  - c) *applying dissimilar conditions to equivalent transactions with other trading partners, thereby placing them at a competitive disadvantage;*

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<sup>37</sup> 4. The parties to an agreement, decision or concerted practice, as mentioned above, may put a request to the CoC to give its opinion to a certain agreement, decision or concerted practice as to its conformity with this Article. The CoC may for the purpose of its assessment of the provided case use the experience of the European Commission, DG Competition, or decisions by the European Court of Justice, in the same or similar cases as a comparative yardstick.

5. The CoC will within one month after receipt of the application in the sense of paragraph 4 of this Article give an opinion to the applicant. If the CoC has not given such opinion within the stated timeframe, the agreement, decision or concerted practice in question is deemed to be in conformity with this Article. The CoC may also on its own initiative or on request by a third party initiate an investigation into the effects of such agreement, decision or concerted practice and give its opinion or decision within one month of the start of the investigation. However, if the CoC has at an earlier stage already approved an agreement, decision or concerted practice, such agreement, decision or concerted practice is deemed to be in conformity with this paragraph.

<sup>38</sup> Competition Policy Newsletter. *The EU gets new competition powers for the 21<sup>st</sup> Century*. The interview with Mario Monti, Commissioner responsible for competition.

<http://www.europa.eu.int/comm/publications/cpn/>

<sup>39</sup> More in “Current issues of EU Competition Law – The New enforcement regime”, Key lecture at the study days of the International League of Competition Law. Barcelona – 2/10/2003.

<http://www.europa.eu.int/comm/competition/speeches/>

- d) *make the conclusion of contracts subject to the acceptance by the other parties of additional obligations that by their nature or according to commercial usage have no direct connection with the subject of such contracts.*

In spite of similar definitions draft amendment propose more detailed legal text in Article 5, now under the new title: Abuse of a dominant position<sup>40</sup>. Draft amendment introduce the concept of “substantial part” of the market and “substantially prevents, restricts or distorts competition in BiH.” This is important because it provides CoC and OCCP’s to direct their activities towards most important distortions of market which substantially endangers competition.

However, we can find a lot of potential cases of using dominant position but most of them are provided by different state and entity laws. For example, we have the situation where The Law on Bottled Drinking Waters was not adopted, without conditions for quality certification, nor the Certificatory Agency was established. In the same time the analysis of the import of bottled waters showed that the import is fifteen times bigger than export because domestic producers do not have certificates.<sup>41</sup> This amount of import represent “*trading conditions that substantially restrict competition*” but current law does not recognized this. It could be only understood as “*unfair trading conditions*”, and since it’s up to government it is considered as *vis maior*. The same situation is with beer

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<sup>40</sup> “1. Any abuse by one or more economic subjects having a dominant position within BiH or a substantial part thereof may be prohibited where it substantially prevents, restricts or distorts competition in BiH.

Such abuse may, in particular, consist of:

- a) *directly or indirectly imposing purchase or selling prices or trading conditions that substantially restrict competition;*
- b) *limiting production, markets or technical development to the prejudice of consumers;*
- c) *applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
- d) *making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.”*

2. *Economic subjects may put a request to the CoC to give its opinion of a certain contract or practice as to its conformity with this Article. The CoC may for the purpose of its assessment of the provided case use the experience of the European Commission, DG Competition, or decisions by the European Court of Justice, in the same or similar cases as a comparative yardstick.*

3. *The CoC will within one month after receipt of the application in the sense of paragraph 2 of this Article give an opinion to the applicant. If the CoC does not give such opinion within the stated timeframe, the contract or practice in question is deemed to be in conformity with this Article. The CoC may also on its own initiative or on request by a third party initiate an investigation into the effects of such contract or practice and give its opinion or decision within one month of the start of the investigation. However, if the CoC has at an earlier stage already approved a contract or practice, or if the contract or practice is already deemed to be in conformity with the Article, that contract or practice cannot again be made a subject to an investigation.”*

<sup>41</sup> Oslobođenje, July 10<sup>th</sup> 2004. [www.oslobodjenje.com.ba](http://www.oslobodjenje.com.ba)

beverage industry, but in this case we have foreign element which is not excuse. BiH have Free Trade Agreement with Serbia and Montenegro and according to that BiH does not take any taxes on the beer imported from SCG. In the same time SCG takes the taxes for the beer from BiH.<sup>42</sup> This leads to the indirectly imposed unfair purchase and unfair trading condition putting local producers at disadvantage, because a foreign beers are subventioned and slowly taking dominant position. However, this is just an impression. No relevant data on the impact on relevant market exists right now because there is no one who will undertake the research.

Those kind of situations are recognized by the Bulldozer Committee (BC)<sup>43</sup> formed by the Office of High Representative (OHR) to mark the obstacles to business, competition, free trade and free market. Bulldozer Committee drafted the amendments to respected laws and most of them are changed. Three of them are linked to article 5 a).

Their eight initiative was about Companies operating in the field of land surveying (geodesy). Private enterprises dealing with land surveying were faced with the impossibility of operating at full capacity due to monopolistic interpretation of relevant laws of the RS Administration for Geodesy and Property-Legal Affairs. According to its interpretation of the law, the Administration reserved for itself exclusive rights to control all operations in the field of land survey and geodesy. By ensuring its exclusive rights to all field works related to geodesy, the Republic Administration for Land Survey and Property-Legal Affairs harmed private initiatives and maintains a monopoly in this market. Amendments were enacted in RS: Law on Survey and Cadastre of Real Estate (Official Gazette RS 19/96) Law on Maintenance of Survey and Land Registry (Official Gazette RS 19/96), and Law on Cadastre of Communal Devices (Official Gazette RS 19/96).

Another example of article 5 a) can be found in 21<sup>st</sup> BC initiative. Bar exams from FBiH and the RS have reciprocity, meaning that a lawyer who has passed the Bar exam in one Entity can practice law in the other one. Although the two Bar exams may have slight differences, they provide the same standard qualification. However, the preconditions for taking the exam were not harmonized in FBiH and the RS. In order to take the Bar exam, a person who has graduated from a Law Faculty needed a certain number of years of legal experience. In FBiH a lawyer could take the Bar exam after two years if this time was spent in court or in a private law practice, and after four years if it was spent in private companies or other government or international bodies.

However, in the RS, a lawyer could take the exam after two years of experience in legal affairs spent at any workplace. This represented an unfair advantage for the RS lawyer. Amendments are enacted in: FBiH: Law on Bar Examination (Official Gazette FBiH 2/95) Articles 2, 3.

One more example is in initiative no 22. Entrepreneurs in FBiH engaged in the construction business have problems with the requirement that they must employ a

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<sup>42</sup> Nezavisne novine, August 4<sup>th</sup> 2004. [www.nezavisne.com](http://www.nezavisne.com)

<sup>43</sup> All Bulldozer Committee's initiatives according to the number mentioned in the text can be found on <http://www.ohr.int/ohr-dept/>

minimum of 15 workers fulltime. There are no such requirements in RS legislation. The requirement of having a minimum of 15 workers is hampering the ability of smaller, private companies with seasonal workers to enter a market that is dominated by predominately large companies. They are not able to register their activities as “construction,” and are therefore not able to bid on tenders that require the company to be a “construction” company. This represents unfair competition from larger, often state-owned companies. RS companies, however, are able to register construction activities without similar requirements and are able to bid and operate as any construction company.

Concerning article 5 b) we also have some examples from OHR BC that could be connected with the distortion of competition. According to the initiative no. 46 we have the case that under the BiH Law on International and inter-Entity Road Transportation, reciprocity is required between bus companies in order to operate services that are inter-Entity in nature. This means that if an RS company wants to open a new bus route that goes from the RS to FBiH, then an FBiH company would have to open a similar route from FBiH to the RS. Although the Book of Rules on Transportation recently adopted by Ministry of Civil Affairs and Communications does allow for operation of a route by one carrier where there is no second operator, the reciprocity requirement in general has fragmented the bus market in BiH. It is absurd to use cumbersome international transport rules when it comes to ensuring traveling within BiH, which is one single country. This could become the case concerning the possibility of one carrier to take the route in one entity limiting *market or the technical development to the detriment of consumers*. The interest of the consumers is the crucial part of this paragraph. Does it mean that in any other case is legal, LoC does not provide the answer.

Similar to this is the situation from initiative no.47. According to the road transport laws of BiH (both RS and FBiH), bus service may only be provided with vehicles with seating capacities of 15 passengers or more. Another requirement of the same law is that transport companies operating services across Entity lines must have a minimum of 5 buses in their fleets. These requirements limit the number of companies that can provide transportation services to many refugee return communities that have populations of fewer than 1500 people. They should not be allowed to overlap and compete with other existing bus routes, especially city bus operations, due to the dilution of their markets and already thin revenue basis. The benefit of the consumers is endangered here too by the law that gives dominant position for the big bus companies.

Furthermore, one interesting situation happened in Sarajevo as a big city when legal dispute between City Public Transportation Company (GRAS) and private privatized bus company “Centrotrans” occurred. But here we have two cases in one. According to the article 5 a) GRAS has dominant position in the City transport in Sarajevo, it has all licenses and is financed by Canton Sarajevo. Comparing to them Centrotrans is facing unfair trading conditions since they got the license for inter-entity transport, and due to the cantonal subvention GRAS is in better position. But from the other side, Centrotrans by taking their inter-entity route is covering the most profitable route in the central part of Sarajevo, taking the source of income from GRAS. GRAS is obliged, as an public



company, by the Canton, to provide transport for the rural and suburbs parts of Sarajevo on the routes who are not profitable at all and where the GRAS has only losses. Therefore, the profit from the central routes are covering the losses on the rural routes. Since all the stations in the town are owned and maintained by the GRAS, the limitation of market at the detriment of consumers from article 5 b) was conducted literally by the official GRAS vehicles and employees who did not let the “Centrotrans” buses to use City stations.

In the area of transport we can find example for article 5 c) too ( BC initiative no. 50). The current RS Law regarding special regime transport creates unfair competition against companies from the FBiH, giving preference to companies from the RS or even from Serbia and Montenegro. Oversized transportation of goods in BiH requires the issuing of a license by the authorities, usually valid for one specific convoy. The license is obtained upon payment of a fee, among other administrative and logistic requirements. The RS law stipulates that a vehicle transporting an oversized load on RS territory will have an 80% discount on the oversized license fee if the vehicle was registered in the RS or in Serbia and Montenegro. This clearly means that companies with a truck fleet composed of vehicles registered in FBiH are charged 80% more than those registered in the RS or Serbia and Montenegro when passing through RS territory. This creates unfair competition and in fact even gives preference to vehicles registered in Serbia and Montenegro over domestic vehicles (FBiH). Amendments to be enacted in: RS: Decree Regulating the Amount of Fees Charged for Special Regime Transport on RS Roads (Official Gazette RS 19/99) Articles 2, 3, 17, 20.

Moreover, there is very interesting initiative no. 27 which represents that legal gaps can create paradise for frauds. There are significant differences with regard to the taxation of second-hand vehicles between the Brcko District, FBiH and the RS. Problems occur due to different interpretations regarding who the taxpayer should be, the buyer or the seller. The different existing legislation leads either to double taxation or to tax-free trade in second-hand vehicles in cases of inter-entity trade. For example, if the seller is from FBiH and the purchaser from the RS, both sides are obliged to pay sales tax. If the seller is from the RS and the purchaser from FBiH, neither is obliged to pay sales tax. This leads to distortions in the market and disables fair inter-entity trade. Recommendation of BC was that the existing legislation (definitions of the taxpayer in the existing FBiH, RS, and Brcko District laws on sales tax) needs to be fully harmonized so that payment of the sales tax becomes consistently the responsibility of the buyer. Amendments BC proposed are to change in: FBiH: Law on Sales Tax on the Turnover of Goods and Services (Official Gazette FBiH 6/95, 25/97, 13/00, 36/00, 54/00, 22/01, 49/02) Article 14.

### **Control of concentrations**

Mergers and acquisitions are treated by current Competition Law in Article 6, Concentration –

*“Prohibited are all forms of concentration of economic subjects that create a dominant position which might result in the prevention, restricting on or distortion of competition in the BiH territory or in a substantial part of it, which occurs when:*

- a) Two or more independent economic subjects are merging or joining, or*
- b) One or more economic subject that is already in control of one or more economic subjects, are merging, thereby obtaining control of one or more economic subjects or of a part of them.”*

Draft amendments propose Article 6 as more precisely explained under the title Control of Concentrations where some of the most important aspects are treated which current law does not know. These are the definitions and regulations on value of merger according to the last financial year higher than 50 million KM, as well as turnovers census of 5 million KM. An good example of approximating the draft changes on LoC is the paragraph 5 which calls on the experience of DG Comp and European Court of Justice (ECJ). Moreover, in paragraph 6 it puts timeline of three months for the processing.<sup>44</sup>

Since there is no precise limits for merging nor anyone who can tell which merging or takeover has elements of distorting market or creating dominant position by such concentration. However, in past few months there have been a number of merging and

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<sup>44</sup> 1. Concentrations between economic subjects taking place in BiH or in a substantial part thereof may be controlled by the CoC and prohibited in case of the creation or strengthening of a market dominating position.

2. For purposes of paragraph 1 of this Article a concentration is defined as a merger between or an acquisition of another economic subject where

- (a) The combined aggregate turnover within BiH realized in the last financial year of all the economic subjects concerned in a merger is higher than KM 50 Millions, and
- (b) The total turnover within BiH within the last financial year of the acquired economic subject is at least 5 Million KM.
- (c) For banks and other financial institutions, the relevant total turnover within the last financial year is calculated on the basis of the total turnover from their regular business operations, in the case of insurance companies on the basis of the total gross premiums of the parties to the concentration in the financial year preceding the concentration.

3. An acquisition of another economic subject is defined as the direct or indirect acquisition of control of the majority of voting stock or the right to directly or indirectly exercise management control of the acquired economic subject.

4. Concentrations in the sense of paragraph 2 of this Article must be notified to the CoC latest one month after consummation of the merger or acquisition. The CoC will elaborate a questionnaire for the purpose of notification of concentrations.

5. Economic subjects may put a request to the CoC to give its opinion of a planned concentration as to its conformity with this Article. The CoC may for the purpose of its assessment of the provided case use the experience of the European Commission, DG Competition, or decisions by the European Court of Justice, in the same or similar cases as a comparative yardstick.

6. The CoC will within three months after receipt of the application in the sense of paragraph 5 of this Article give an opinion to the applicant. If the CoC does not give such opinion within the stated timeframe, the concentration in question is deemed to be in conformity with this Article. The CoC may also on its own initiative or on request by a third party initiate an investigation into the effects of such concentration and give its opinion or decision within three months of the start of the investigation. However, if the CoC has at an earlier stage already approved a concentration, or if the concentration is already deemed to be in conformity with this Article, that concentration cannot again be made the subject of an investigation.”

takeovers but we can not tell if it is against the LoC or in favor of competition because there is no possibility for real research on the impact such concentrations have on market. Therefore all examples that could be mentioned here are **highly speculative** without enough facts but just for thinking since they are taken from newspapers as creators of public opinion.

The Oil Refinery in Bosanski Brod and Oil Distributive Company – Petrol from Banjaluka are expected to merge to become more interesting for privatization. Whatsoever, the RS government supports that idea because they want to privatize oil sector in RS and gain money in RS budget. Although, the new company will be the monopolist no one is concerned about that.<sup>45</sup>

The LNM company has bought the BH Steel Company in Zenica, one of the biggest in Southeast Europe as well as they have plans to buy few coal and iron mines in RS. From the future perspective it is great investment with 135 – 180 million KM.<sup>46</sup>

There have been two big merges HVB Bank and Central Profit Bank with expected 12% of banking market with active of 355 million euros and 64.000 clients.<sup>47</sup> Moreover, Universal Bank and Zagrebacka Bank merged and went under the UniCredit Bank with the active of one billion and 300 million KM and 300.000 clients.<sup>48</sup> Still strongest bank is Raiffeisen bank.<sup>49</sup> This could be understood also as in favor of competition and consumers since the three big banks will compete between themselves with few smaller.

After the Regulation 1/2003 the main changes concern substantive, jurisdictional and procedural issues. The new text reads: “A concentration which would significantly impede effective competition, in the common market or in a substantial part of it, in particular by the creation or strengthening of a dominant position, shall be declared incompatible with the common market.” There will be more streamlined system for merger referrals, which will smooth the process of referrals to and from the Commission. Moreover, notification is now possible on the basis of good-faith intent to merge, where previously a binding agreement was required.<sup>50</sup> Something like that we can recognize in article 6 of the new draft of LoC.

### **a.3. Liberalization**

Liberalization of utilities and undertakings, which carry on activities for general interest, as well as antitrust control of state monopolies in the process of privatization are not

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<sup>45</sup> Nezavisne novine, August 8<sup>th</sup> and 10<sup>th</sup> 2004. [www.nezavisne.com](http://www.nezavisne.com)

<sup>46</sup> Oslobodjenje, October 12<sup>th</sup> and Nezavisne novine July 28<sup>th</sup>

<sup>47</sup> Nezavisne novine, July 1<sup>st</sup> 2004. [www.nezavisne.com](http://www.nezavisne.com)

<sup>48</sup> Nezavisne novine, June 24<sup>th</sup> 2004. [www.nezavisne.com](http://www.nezavisne.com)

<sup>49</sup> Nezavisne novine, June 2<sup>nd</sup> 2004. [www.nezavisne.com](http://www.nezavisne.com)

<sup>50</sup> More on <http://europa.eu.int/comm/competition/mergers/legislation> and on <http://europa.eu.int/comm/competition/antitrust/legislation>

regulated in current Competition law. In the draft amendments new article 25 is introduced:

*“Publicly Owned or Controlled Economic Subjects*

- 1. In the case of publicly owned or controlled economic subjects, or in the case of economic subjects to which the Government of BiH or its entities grant special or exclusive rights, neither the Government of BiH nor the entities shall enact or maintain in force any measure contrary to the rules contained in this Law.*
- 2. Economic subjects entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules of this Law, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.*
- 3. The Council of Competition shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate orders or decisions to the Government of BiH and the entities.”*

Due to the fact that the privatization process is still ongoing the relevant regulations can be found in two entity laws on privatization as well as ten cantonal laws on privatization in F BiH, which complicate the overall situation in this segment of competition policy, although none of them have competition policy as a goal but pure transformation in ownership. However, public utilities are grouped in five groups related to the Annex 9. Of Dayton Peace agreement on Commission for Public Corporations: Telecommunications, Transportation, Energy, BiH Railway Public Corporation and BiH Road Infrastructure Public Corporation.<sup>51</sup> In support to this OHR urged the entity governments to pass to parliaments the Laws on Public Investments. Current situation is that FBiH Parliament have discussed the Law on Public Companies in July 2004 and left it after October elections for adoption, but Finance ministry still have not prepared the Law on Public Investment while in National Assembly of RS the Law on Public Companies was already adopted as well as draft Law on Investment of Public Money.<sup>52</sup>

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<sup>51</sup> More on <http://www.ohr.int/ohr-dept/econ-pilar-unit/>

<sup>52</sup> More on [http://www.ohr.int/ohr-dpt/presse/default.asp?\\_id=33059](http://www.ohr.int/ohr-dpt/presse/default.asp?_id=33059) on 25.08.2004.

#### **a.4. Administrative Capacity of the Antitrust Regulator**

##### **a.4.1. Ensuring independence and professional literacy of the regulator**

According to the assessment<sup>53</sup> of the project the following staffing plan has been proposed by the project: 7 councilors, but actually 6, 1 Office Manager, 2 Economists, 2 Lawyers, 2 Assistants, 1 Driver.

Moreover, Art. 11 of the current BiH Law on Competition provides for the establishment of the Competition Council (CoC) as a legal person with its seat in Sarajevo, consisting of six councilors and exceptionally one further councilor appointed by the EU (Art. 11.3 LoC) but in the new proposal the seventh councilor appointed by EU is not in option. In the future draft proposal there will be only 6 councilors by the Law although in the reality we have the same situation now too, because the EU did not appoint their representative as seventh<sup>54</sup>. Three councilors are appointed by the Council of Ministers of BiH, two councilors by the Federation of BiH and one councilor by the Republic of Srpska.<sup>55</sup> Current councilors are Dragiša Stanković, President of CoC, and Sanja Božić, Dragan Gadžić, Sena Hatibović, Ibrica Lakišić and Gordan Raspudić as members.<sup>56</sup> The problem is that the Councilors are appointed by the Council of Ministers of BiH, and still on previous political agreement. The similar situation is with OCCP's. The practice has to be changed in this respect to provide them with more independence.

##### *“Article 10 - The Council of Competition*

- 1. The Council of Competition shall be an independent body that must ensure the consistent implementation of this law in the whole territory and shall have the exclusive competence to decide whether there are certain forms of prohibited competition practices.*
- 2. The Council of Competition shall have the status of a legal person and shall be seated in Sarajevo.*

*Funds for operation of the Council of Competition shall be provided out of the budget of BiH.”*

According to the new draft of the LoC<sup>57</sup>, “body that must ensure the consistent implementation of this law” in 10.1. CoC should become “body that ensures the

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<sup>53</sup> Institutional framework document for competition policy and law of Bosnia and Herzegovina (BiH). I. General Structure of the “Council of Competition” (CoC) and the “Offices of Competition and Consumer Protection” (OCCPs) in the Entities in *H. Holzer 2004*.

<sup>54</sup> Interview with Mr. Emir Djikic, EC local consultant on Competition Policy Project. August 2004.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> *“Article 10 - The Council of Competition*

*1. The Council of Competition shall be an independent body that ensures the application of the principles lay down in this Law in the whole territory of BiH and shall have the exclusive competence to decide whether this Law has been violated. The Council of Competition shall investigate cases of suspected*

application of the principles laid down in this Law” which is not the same thing from the legal perspective and the new solution is more suitable with the limited resources of CoC. Furthermore, in 10.3. “Funds for operation” become “Sufficient funds” which is very good move in the establishment of one new authority. The CoC have appointed one councilor as president of the CoC for a one-year term without a possibility to be reappointed during his term of office (Art. 11 of the LoC). In the same time article 12 LoC regulates the possibilities of early termination of a councilor in the case of death, resignation or revocation by the CoC while article 12.2 LoC provides for the replacement of the terminated councilor by the appointment of another councilor for the remaining term of office.

The members of the CoC was supposed to be selected among the experts in certain areas and their status shall be such of an independent administrative judge and incompatible with any direct or indirect, permanent or periodical duty, with the exception of academic activities (Art. 11.2 LoC). It could be argued are the appointed persons experts in certain areas especially connected with the competition policy due to the fact that it is something new in BiH. The project proposed, as the best solution, an authority, that is legally not treated as an integral part of a ministry, rather an independent body outside any disciplinary control (like independent judges). Although CoC is formed as such authority we can find inconsistency related to Offices for Competition and Consumer’s Protections (OCCP) in entities who are linked to the Ministry of Trade in each entity, and who are supposed to undertake investigations on the field. The division of competences are viable from the Article 14 - Competence of the Council of Competition:

*1. In exercising its powers, the Council of Competition shall:*

- a) decide on the establishment of general definitions of calculation methods for key competition terms such as trade, control, relevant market, dominant position, etc.;*
- b) decide on the establishment of general definitions of calculation methods for specific areas of activities, such as banking, insurance, etc.;*
- c) decide on allowing exemptions to:*
  - 1) certain categories of agreements, associations, concerted practices or concentration;*
  - 2) economic subjects or associations of economic subjects whose market share and trade do not reach the level above which they can influence competition;*
- d) decide on the establishment of procedures for reporting, investigations and hearing;*

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*infringements of this Law upon application from economic subjects or third persons or on its own initiative.*

*2.The Council of Competition shall have the status of a legal person and shall be seated in the city of Sarajevo.*

*3.Sufficient funds for the full operation of the Council of Competition shall be provided out of the budget of BiH.”*

- e) *decide on petitions addressed to the Office of Competition and Consumer Protection as to the investigative procedures for the investigation of potential infringements of this law and requests for assistance in the execution of its orders;*
- f) *decide on the imposition of sanctions or other measures to economic subjects in case of infringement of this law;*
- g) *decide on the provision of non-obligatory opinions and recommendations on any aspect of competition, or at the request of State authorities, economic subjects or associations;*
- h) *decide on the internal organization, functioning and operation of the technical and administrative staff of the Council of Competition;*
- i) *propose to the Council of Ministers of BiH:*
  - 1) *the amount of fee to be levied to its activities and practices;*
  - 2) *the amount of pecuniary sanctions that may be imposed;*
  - 3) *the amount of funds required for operation.*

Draft amendments in Article 14 offers some changes in exercising its functions, for example the Council of Competition should have the competence to decide on matters related to competition policy and law according to the legislation of BiH.

- *decide on the interpretation of general definitions and calculation methods for key competition terms; (leaving the space to CoC to define which are the competition terms)*
- *decide on the establishment of definitions and calculation methods for specific areas of activities, such as banking, insurance, etc.; (erasing “general definitions” leaving space to define it precisely.)*
- *The exceptions are deleted in support of the consistency towards EU practice.”*

CoC received some obligations and responsibility towards Council of Ministers and BiH Parliament. The Council of Competition shall propose to the Council of Ministers of BiH each year in due time before the adoption of overall budgetary decisions for BiH by the Council of Ministers: the methodology for sanctions and fines that may be imposed for certain types of violations of this Law; the amount of funds required for the operation of the Council of Competition, including the fees for the councilors for the following year; the amount of funds required for the operation of the Offices of Competition and Consumer Protection as far as the administration of this Law is concerned. In addition, the Council of Competition shall prepare annually to the end of the calendar year an official activity report including recommendations for further developments in BiH competition policy and law, to be delivered to the General Assembly of BiH and to the public.”

Furthermore, the relationship between CoC and the OCCPs is that the CoC is the decision-making body and the OCCPs is the territorial law implementation and execution offices. In other words, the CoC would not be able to execute the Competition Law (LoC) without activities carried out by the OCCPs and vice versa. This is the result of the political division of governmental responsibilities in BiH and its entities. Although the

establishment of three different offices is certainly not an efficient system, there appears to be “no other solution available for the time being.”<sup>58</sup>

The vertical institutional structure of the CoC in cooperation with the OCCPs is based on receipt of complaints, or notification of mergers and acquisitions, taking of administrative initiatives, investigation of facts and circumstances, case analysis, proposals for decisions, decision-making and enforcement of decisions, and seems to be underdeveloped for such ambitious responsibilities and duties, since the total number of staff involved is low. In the OCCPs as enforcement institutions only three civil servants in each will be entrusted with the enforcement of the LoC and related legislative acts. Authority. One division head that partly enforces consumer protection issues, one lawyer and one economist. The CoC involves seven councilors (by the Law, and six in practice), and six staff members (two lawyers, two economists, two assistants). It would be desirable if the councilors would actively be involved in the law enforcement, which again depends on their personal competence and level of engagement.

The Competition Policy project planned for the first phase of CoC activity, to draft legislative acts, including amendments of the LoC. But, this task requires a basic decision about the degree of the timeframe and type of approximation of the BiH LoC to the EU rules of competition. Once this basic decision has been made, the CoC has to elaborate and put before the Parliament a necessary set of additional draft legislative acts to provide BiH with a complete set of rules and regulations necessary for the implementation of the LoC by the established authorities. Such draft set of legislative acts for consideration by the CoC was prepared but not reach the parliament. Both BiH entities are entitled by Art. 15 LoC to establish in each entity within the ministries in charge of trade an “*Office of Competition and Consumer Protection*” (OCCP) as separate organizational units. Art. 16 LoC defines the competence of the OCCPs, as far as competition policy and law is concerned, mainly as to the implementation of the LoC by carrying out investigations, as requested by the CoC, by ensuring the efficient execution of decisions and by carrying out all tasks provided for in the law(s) regulating consumer protection.

Draft amendments propose better solution underlying independence of OCCP’s in “Article 15 - Establishment of the OCCP which is more realistic underlining that OCCP’s will follow the recommendations of CoC but under the size and manpower determined by the budget.”<sup>59</sup>

Moreover in Article 16 of current LoC- Competence of the OCCP’s are:

1. *Within their territorial jurisdiction the OCCPs shall ensure the application of this Law as well as of the Law regulating consumer protection.*

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<sup>58</sup> Institutional framework document for competition policy and law of Bosnia and Herzegovina.

<sup>59</sup> *Within their territorial jurisdiction, both entities shall within the ministries in charge of trade establish their OCCPs as separate and independent organizational units and set the rules of internal governance and classification of assignments. The budget, determining the size and manpower of these units shall follow the recommendations made by the Council of Competition in accordance with Art 14 paragraph 2 of this Law.”*



2 *The competence of the OCCPs shall in particular include:*

- a) carrying out investigations as requested by the Council of Competition*
- b) ensuring an efficient execution of decisions issued by the Council of Competition carrying out all tasks provided for in the law regulating consumer protection.”*
- c) carrying out all tasks provided for in the law regulating consumer protection.*

Draft amendments clarified this competence bit more adding:

*“d) preparing annually in due time an official OCCP activity report, including recommendations for further developments in BiH competition policy and Law, to be delivered to the Council of Competition for inclusion in its official activity report till the end of each calendar year.”*

Particular issues relevant for the investigation procedure, including time periods, are described in detail in the Art. 18 – 19 LoC as follows:

- “1. Under its exclusive competence the Council of Competition may request from one or both OCCPs the carrying out of an investigation about a potential infringement of this law. The request shall be issued in official writing or on the basis of an appeal, a complaint filed by the OCCP or by any natural person or economic subject, also including consumer associations.*
- 2. Upon receiving appeals or complaints, the Council of Competition shall examine whether sufficient reasons exist to open an investigation. Should it come to the conclusion that there are not sufficient grounds to initiate an investigation, the Council of Competition shall issue a decision thereon supplemented by an opinion and deliver it in writing to the appellant or claimant within three months following the day of appeal or receipt of complaint.”*

In order to present the scope of work we will present Article 19 of the current LoC because we believe that understaffed and under financed authority can not cope with the following:

#### *Conduct of Investigation*

- 1. The OCCPs shall have the exclusive competence to carry out an investigation at the request of the Council of Competition. In terms of activities carried out by the State authorities of BiH or activities carried out in both entities, each OCCP shall retain exclusive investigative competence in its respective territory and to that effect they shall be obliged to work together.*

2. *For each particular case of investigation the Council of Competition appoints a responsible councilor and the OCCP a responsible officer who will cooperate and perform their duties as indicated in the investigation request.*
3. *In performing their duties related to the carrying out of an investigation, the OCCP officers shall:*
  - a) *be entitled to have access to documents, data and information, all business premises, movable and immovable property of relevance to the economic subjects concerned, without being prevented by the character of business, State or technical secret;*
  - b) *be entitled to request seizure of documents that belong to the economic subjects and, thereby only of those that are specifically indicated in the investigation request.*
  - c) *hold in strict confidence all documents, data and other information they receive and must not use them for any purposes other than those indicated in the request of the Council of Competition.*
4. *The responsible councilor shall provide the Council of Competition with an investigation report within the period of time indicated in the investigation request.*

In the draft amendment by this article OCCP has received more concrete powers:

3. *In performing duties related to the carrying out of an investigation, the OCCPs shall have the following powers of inspection:*
  - a) *to enter any premises, land and means of transport of economic subjects and associations of economic subjects;*
  - b) *to examine the books and other records related to the business, irrespective on the medium on which they are stored;*
  - c) *to take or obtain in any form copies of or extracts from such books and records;*
  - d) *to seal any business premises and books or records for the period and to the extent necessary for the inspection;*
  - e) *to ask any representative or member of staff of the economic subject or association of economic subjects for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record those answers.*

However, insufficient number of staff planned for the OCCPs (one lawyer, one economist) makes it superfluous to deal in length with organizational questions of how to divide the workload within the Office at the current stage. The respective duties to be obeyed by the staff of the CoC are regulated under the “Law on Civil Service in the Institutions of Bosnia and Herzegovina” (Official Gazette of BiH 19/02 of 25 July 2002,

as amended 8/03 of 3 April 2003). For the staff of the OCCPs the relevant law for the Federation is laid down in its Official Gazette 29/03 of 30 June 2003 and for the Republika Srpska its Official Gazettes 16/02 of 30 March 2002 with amendments. This law has also been published in the Official Gazettes of the State and the entities: Official Gazette of BiH 13/02, Official Gazette of the Federation of BiH 25/02, Official Gazette of the Republika Srpska 34/02 and the Official Gazette of Brcko District 11/02.

#### **a.4.2. Structuring regulator's activities toward fighting the most important violations of antitrust regime.**

The CoC and the OCCP are now in the stage of building their own structure and their own way of functioning and therefore for structuring regulator's activities towards fighting the most important violations of antitrust regime it is of fundamental importance to build this institutions first and to strengthen them, since they did not exist just few months ago.

Structuring these activities practically started beginning of 2004. The Competition Council is established on March 1<sup>st</sup> 2004 as well as councilors are appointed.<sup>60</sup> The very same day the first meeting of the working group for drafting laws related to competition and consumer production was held.

The premises for CoC are provided in the Ministry of Foreign Trade and Economic Relations one month later, April 1<sup>st</sup> 2004 while entities provided the premises for OCCP's by May 31<sup>st</sup>. As far as the internal relations of OCCP in F BiH towards F BiH ministry of Trade are concerned Government of F BiH adopted the amendments to Rule Book Of the Ministry for Trade in F BiH while the same is expected from RS Government. The internal vacancies for OCCP positions in F BiH are closed by January 31<sup>st</sup> and all four all filled by now while in RS OCCP only three members were appointed by internal vacancy on February 29<sup>th</sup> 2004 and the fourth is to be appointed by the external vacancy and the place is still empty.<sup>61</sup> The regulator's activities are structured towards two goals. First is to establish vertical institutional structure CoC – OCCP's according to the current Law, and the second to work on upgrading the legal framework of Competition Law.

Concerning the first priority, institutionalizing the competition authorities, Delegation of EC in BiH put a lot effort towards it. The project for establishing the Competition Council and OCCP was one of their priorities. Although there were doubt is the proper structure of Competition authorities found the priority was to make them possible and to start to work.<sup>62</sup> For this purpose the financial resources have been provided. EC have

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<sup>60</sup> Program of activities for realization of priorities in 2004 from the report of the European Commission to the Council of Ministers on the preparedness of Bosnia and Herzegovina for negotiations of SAA with EU. Item no. 15a, Directorate for European Integrations, <http://www.dei.gov.ba>

<sup>61</sup> Ibid.

<sup>62</sup> Interview with Ms. Emira Kadric, Advisor in the Economic Department of the EC Delegation in BiH. August 2004.

provided 60.000 euros for the necessary equipment.<sup>63</sup> Furthermore, out of requested 906.000. KM in BiH State Budget for 2004, Parliament approved only 500.000. KM that will be enough for the pure functioning of CoC, salaries of the councilors, office work and office materials, and basic promotion and trainings.<sup>64</sup>

From the perspective of consumers and their associations<sup>65</sup> this newly establish CoC and OCCP's seem to be insufficient and weak as such isolated with weak network with other support institutions.<sup>66</sup> In this respect, the CoC and OCCP's should be further strengthened, more staffed and better financed if their role is supposed to be relevant. Having in mind that the current legal framework is very general and that it lacks concrete elements of competition policy it is logical that the second priority is to upgrade and improve the Competition Law.

As we already mentioned, the Working group for drafting laws related to competition and consumer's protection had its first meeting on March 1<sup>st</sup> and also met subsequently. Together with the EC consultants and foreign experts the draft amendments on the Competition Law was prepared but it wasn't sent to the Council of Ministers. Moreover, the Proposal of the Decision on relevant matters for the Competition Law was prepared for Council of Ministers to be passed to BiH Parliament in order to cover the existing legal gaps in The Law. The Idea was to fill those gaps fast in order to start working on implementation of competition policy before the new Draft Law on Competition is prepared. However, it never reached Parliament.

The existing are still open and they consider<sup>67</sup>: definition of relevant market; horizontal agreements; vertical agreements; dominant position; merging of trade associations and concentrations; the responsibility for proving evidence; temporary measures, etc. However, there is tendency and readiness in CoC and EC CP Project team to draft a new Competition Law which should include all suggestions from the previously mentioned draft amendment on the Law and from the "Decision" in one package that should be more streamlined towards the EU experiences in Competition policy. Finally, all the competition authorities just started and EC delegation do not expect them to start to fully function in next few years which is also the experience from Germany and Austria where in developed market societies five or more years were needed for competition authorities to start to give some results in implementation of competition policy and consumers protection.<sup>68</sup>

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<sup>63</sup> Ibid.

<sup>64</sup> Interview with Mr. Emir Djikic, EC local consultant on the Competition Policy Project. August 2004.

<sup>65</sup> The Consumer association of RS from Banjaluka, and consumers associations from Zenica, Sarajevo and Tuzla formed the Association for Consumer's Protection of BiH.

<sup>66</sup> Interview with Mr. Zoran Popovic. President of the Directory Board of the Association for Consumers Protection of RS. September 2004.

<sup>67</sup> See the Decision on Relevant Matters for the Competition Law in Holzer, BiH version.

<sup>68</sup> Interview with Emina Kadric, advisor in Economy Department of EC Delegation in BiH.

### **a.5. Enforcement Record of the regulator**

Establishment of a solid and satisfactory enforcement record of the regulator which is in line with the same practice of the similar regulators in EU can not be analyzed here because there have been no cases in front of CoC or OCCP's due to the fact that they have been established six months ago. There is nothing to compare or to establish a record on the cases. Practice does not exist yet in this field.

### **a.6. Promoting Competition Advocacy within economic operators and media**

A very important segment of Competition policy has to be promotion and advocacy which did not started yet in full capacity. On the October 15<sup>th</sup> a big conference will be held in Sarajevo on the topic "Single Economic Space – New Institutions for the New Time". The conference was organized by EU team for technical support for the creation of Single Economic Space in BiH and it will be focused on improvement of the competition policy in BiH, strengthening the rights of consumers and improvement of the protection of goods and free trade. As their survey find 81% of people supports single economy while only 13 % think that divided economy is better and the rest did not answer.<sup>69</sup>

However, nor economic operators nor media are informed about competition policy, Competition Law or authorities as CoC and OCCP. Their knowledge about this is limited. But there is space to promote competition policy in three directions.

First way is towards company leaderships, associations of employers as well as trade unions. They are the most interested in fair play competition on the market. Second way is through Chambers of Commerce. In BiH there are 14 Chambers, according to state structure. Foreign Trade Chamber of Commerce as an umbrella organization on BiH level has a number of departments dealing with different aspects of business life but does not have a department for Competition Policy. However, there are good will to support promotion of competition policy on the top level of the FTCC although they are still in the process of finding their own role in the business and economic surrounding, fighting different particular interests of local chambers and branch groups.<sup>70</sup>

Third way to promote competition policy could be done through one new group of very influential players in business life – Regional Economic Development Agencies. There are five<sup>71</sup> regional agencies that are consisted of the business people from different municipalities and what is most important across the entity borderline each. They have been build bottom up according to the pure economic interest of each municipality towards the participation in the economy of region. This project to is financed by EU and led by EU RED project.<sup>72</sup> Their role in promotion of competition is obvious and logical.

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<sup>69</sup> «The majority of citizens want united economy». *Dnevni avaz*, October 14<sup>th</sup> 2004, pg. 9

<sup>70</sup> Interview with Mr. Milan Lovric, President of the Foreign Trade Chamber of Commerce of BiH. August 2004.

<sup>71</sup> Northwest, Northeast, Central, Sarajevo and Herzegovina economic regions.

<sup>72</sup> More on <http://www.eured-bih.org/eng/documents/regions.htm/regions.htm>

Furthermore, in the Statutes of each of the five regional agencies the obligation to promote good business environment and competition is written. Moreover, they are supposed to take over the role of Bulldozer Committee formed by OHR to identify the obstacles for business and to propose changes in the legislative and the administrative practice.<sup>73</sup> All these organizations and associations have their resources which for the promotion of the better economic and business surrounding. If the competition policy is the most important project in economy and business reform in BiH their focus should be on it in next few years.

Finally, all of them, chambers of commerce, five regional development agencies, Bulldozer Committee through OHR, EU RED project itself have their own web sites where competition policy and competition authorities can be promoted. Moreover, in the future they could become forums for exchange of information on competition policy, practices, companies who break the law etc. A good example is Euro Info Correspondence Center / Bosnia and Herzegovina (EIIC BiH) as a member of the "EIC Network" founded by the European Commission in 1987 as an instrument to support small and medium enterprises (SME's) with the goal to inform, to advise and to assist SME's.<sup>74</sup> There are also examples of local initiative. An "Action – Do You Think Globally?" initiated in November 1999 by BiH Chamber of Commerce, QSS Company, and IT magazine INFO to give all business, educational and cultural subjects an e-mail address and opportunity to present themselves on internet free of charge to promote using IT technology and to improve their work and quality of services as well to improve their competitiveness on the market.<sup>75</sup> There are many tools that could be used for cheap money to promote competition policy through already existing and functioning institutions and initiatives.

Therefore, it is planned that general activities will cover presentations, production of special documentations and information for the public. Special attention will be dedicated to assistance within the institutional framework. "The project has the task to make sure that decisions and actions of the established competition authorities will be made understood by the interested and concerned public, in particular the business community and the legal and economic professional bodies."<sup>76</sup> This will include following:

- Presentation of the project, its activities and planned results, in a public event;
- Ensuring the coverage of the project and its underlying issues by different public media;
- Organization and carrying out of general workshops, seminars, conferences, etc., in cooperation with other public awareness initiatives linked to the establishment of a single economic space, economic development of BiH and EU integration;
- University lectures, introducing in the University of Sarajevo intensive courses in competition policy and law for economic and law students;
- Organization of a Final Conference addressing a broad audience.

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<sup>73</sup> Interview with EU Red consultant for small and medium enterprises.

<sup>74</sup> <http://www.euroinfo.ba/streamenglish/article.php?pid=103>

<sup>75</sup> <http://internet.ba>

<sup>76</sup> Holzer Heinrich, 2004.

“Specific measures aimed at an increase of the public awareness as to the newly established competition authorities and their functions will be the following:

- Leaflets and flyers, including a general leaflet on the project and its objectives;
- A project website, that will include the specific issues of each project component and targeted outputs, results and objectives, including all substantial output of the project in Bosnian and English;
- A project newsletter to make public from time to time specific milestones in the work of the project;
- Focused publications for specialized audiences (Glossary on competition term in different languages, handbook on competition policy and law in BiH);
- Specialized workshops and seminars for training of civil servants in the field of competition policy and law and consumer protection, as well as lawyers from companies and law firms;
- Assistance to the CoC in the elaboration of a web page for the CoC after its establishment. This web page shall give a detailed list and all texts in Bosnian and English about the actual competition laws and related legislative acts, an overview of the organization of the CoC and the OCCPs, distribution of functions among civil servants, decided cases, policy statements, press releases, etc. and finally all necessary names and addresses for applications for companies and persons concerned.”<sup>77</sup>. This part of the project should start by the end of 2004.<sup>78</sup>

It is obvious that the citizens are ready to accept single economic space as well as competition policy that will have their (consumers) interest as one of its goals. In the survey conducted by EC Delegation in BiH in July<sup>79</sup> this year on the sample of 1500 in all BiH, respondents were asked if they had ever complained about a good or a service? Out of 1500 respondents 64,4% said no, 34,2% said yes and 1,4% don't know. On the question : if you had a complaint about something you had bought or a service you had received who would you complained to. The result are: 74,8 % to the shop/business; 13,9 % there is no point to complain; 4,2% to the police and 2,25% to the media. If they complained they would usually requested a replacement 75,5%; requested money back 16,8%, seek the director's attention 2,7%. Noone had even mentioned any of the already established institutions for consumer protection that is finally filled with three more members on September 30<sup>th</sup> nor CoC or something else. It would be peaty if this opportunity is not going to be used to involve all the above mentioned institutions in the promotion and advocacy of this important matter.

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<sup>77</sup> Ibid.

<sup>78</sup> Interview with Mr. Emir Djikic.

<sup>79</sup> <http://www.delbih.cec.eu.int/>

## b. State aids

State aid still remain unregulated. The Law on State aid does not exist and it seems that there is no clear picture how it should look like. Is it going to be part of LoC or separate law? Is it going to be implemented by the CoC and OCCP's in that case or separate regulator is to be formed? What is better solution it is difficult to say. The experiences from the newcomers to EU who are of BiH size should be considered as well as from BiH neighbors but having in mind the specific situation and circumstances in BiH. The EU delegation hired experts are still discussing upon it. What is for sure and provides the best picture is the part of EC report on this subject:

*“In the area of state (public) aids, BiH falls significantly short of future SAA requirements. The existing competition law contains no provisions on state aid - and indeed no aid is given at State level. Nevertheless, the Entities provide public assistance either to enterprises or sectors (e.g. mining in FBiH and agriculture in RS). So far there is no authority overseeing this assistance, no inventory of aid and no systematic reporting. Under a SAA this would need to be rectified”<sup>80</sup>*

Moreover, in the Communication from the Commission to the Council and the European Parliament on the “The Western Balkans and European Integration” the following was stated:

*“The transition from centrally planned to functioning market economies requires reform efforts in many areas, including privatization and financial sector development. The Commission will continue to provide assistance in this area. Trade is a cornerstone of the Stabilization and Association process. Following the introduction of the European Union's trade measures in the region, exports from these countries to the Union have increased substantially. The network of free trade agreements between the countries will further stimulate trade, investment and thereby economic development”.<sup>81</sup>*

A state aids regulation will help for sure in this respect in the transition period concerning the competitiveness of small end medium enterprises towards big systems which are still getting the subsidies from the budget on different levels. From the other side, leaving them without subsidies will mean closing the doors in most of the cases, and hundreds of people unemployed. However, some subsidies to enterprises are legal in EU but in a certain amount (50.000 euros a year). This limit has to be decided upon in BiH.

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<sup>80</sup> Commission of the European Communities, Brussels, 18.11.2003, COM(2003) 692 final, chapter 3.5.1. Competition, <http://www.delbih.cec.eu.int/en/index.htm>

<sup>81</sup> COMMISSION OF THE EUROPEAN COMMUNITIES, Brussels, 21.5.2003, COM (2003) 285 final COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT The Western Balkans and European Integration



## **b.1. Control on state aid**

The Current Law on Competition does not include anything about state aids but the draft proposal for new law includes two new articles which would at least provide for general regulation on state aids.

### *Article 25 - Publicly Owned or Controlled Economic Subjects*

- 1. In the case of publicly owned or controlled economic subjects, or in the case of economic subjects to which the Government of BiH or its entities grant special or exclusive rights, neither the Government of BiH nor the entities shall enact or maintain in force any measure contrary to the rules contained in this Law.*
- 2. Economic subjects entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules of this Law, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.*
- 3. The Council of Competition shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate orders or decisions to the Government of BiH and the entities.*

Furthermore, more about state aid is included in the draft Article 26 - Aid granted to Economic Subjects

- 1. Any aid granted by the Government of BiH or by the entities to an economic subject through State resources or legislative or administrative power in any form whatsoever which distorts or threaten to distort competition by favoring a certain economic subject or an association of economic subjects or the production of certain goods or services shall be viewed as a violation of this Law.*
- 2. The following shall not be viewed as a violation of this Law:*
  - a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;*
  - b) aid to make good for damage caused by natural disasters or exceptional occurrences.*
- 3. Aid granted to promote economic development, to remedy serious distortions in the development of the economy, to facilitate the development of certain economic activities or regions of BiH, to promote culture and heritage conservation or other aid having similar characteristics, may be viewed by the Council of Competition in a decision not to violate the provisions of this Law.*

Tendency in EC Delegation in BiH is to make separate Law on State Aid as well as separate authority regulator. The project is written and submitted to EC for CARDS 2005. It is expected that the project will be approved but no results are expected before the end 2005.<sup>82</sup> However, some draft theses are already prepared for BiH Council of Ministers but they are far from form of law. It is just discussion paper.<sup>83</sup>

Since the privatization is still ongoing process, most of the state aids is going to the publicly owned or controlled enterprises. These two articles even if they are going to be adopted are very general dealing with the basics of the state aids, leaving a lot space for calculations. There are no limits, census of the state aid, the calculated impact on the market by such state aids etc. It seems that this represents just breaking the ice in this area but BiH does not have time for the experimenter law on state aids which will be valid for two or three years like the Law on Competition and Law on Consumers Protection without properly established regulators, and in constant process of changes. All of these laws including the future State Aids Law in this starting point have to provide legal security, strong promotion and precise implementation to be recognized and respected.

## **b.2. Notification system for state aid schemes and ad hock state aide on different levels ( state, municipalities, districts)**

Since there is no State aid regulation, notification system and state aid schemes does not exist. However the state aids exist in different examples from subventions to the support of enterprises and public utilities but it is not illegal and therefore can not be discussed in this paper. For all the interested the samples could be easily found in every state, entity, cantonal or municipal budget by now.<sup>84</sup>

The first step, also forced by international community was to make a data base of all foreign donation to the entities and through the state. This could be considered as a preparatory training for the entity and state institutions for the future implementation of the state aids policy.

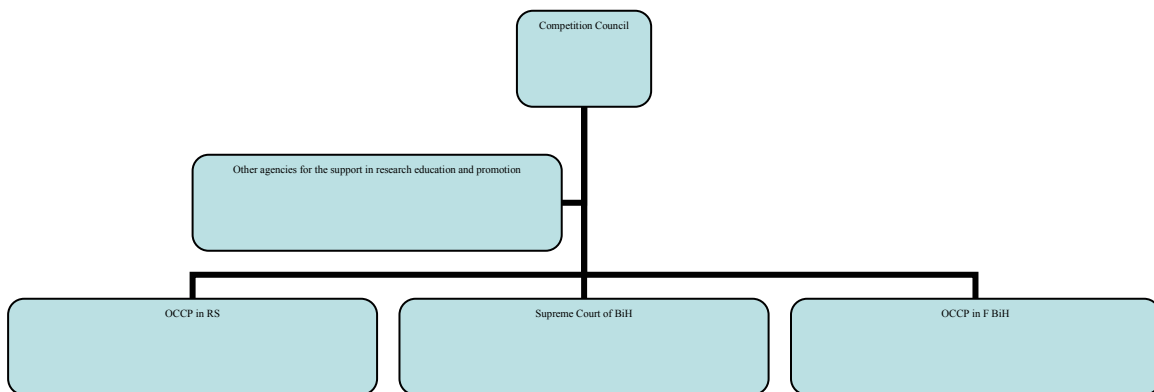
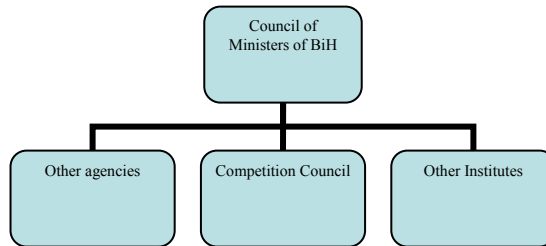
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<sup>82</sup> Interview with Ms. Emina Kadric, Advisor in Economic Department of EC Delegation in BiH. August 2004.

<sup>83</sup> Interview (phone) with Ms. Maja Rimac, responsible officer in the Directorate for European Integration of BiH, August 2004.

<sup>84</sup> Examples of the state aids practice can be found in RS and F BiH budget for 2003 and 2004 as well as is in the Program of public investitions in F BiH 2004-2006 available on the [www.fbihvlada.gov.ba](http://www.fbihvlada.gov.ba) and [www.vladars.net](http://www.vladars.net)

#### 4. The schemes of institutions



## The map of economic regions in BiH



### **III Summary of recommendations**

In general terms, the most important areas for progress remain linking the local competition authorities to independent agencies and economic regions (as opposed to linking them to entities and ministries). Improved financing is necessary to allow for independence from political influences.

#### **a. Short-term recommendations**

- Prepare the new draft Law on Competition which will include all relevant matters from the Decision on the relevant matters for LoC and to send it into the parliamentary procedure.
- Employ all administrative staff in CoC as it was supposed to start functioning.
- Employ fourth administrative in OCCP of RS and to finish the staffing procedure.
- Begin as soon as possible with the promotion of competition policy in economic subjects and media as well as through Chambers of Commerce, Association of Employers, Trade Unions and the five regional development agencies.
- Create an information network, which will deal with promotion of competition policy like newly, created ECN – European Competition Network which role is to exchange information on best practices. This can be done through already established websites of chambers of commerce, Euro info Correspondence Center, SEEDbiznet, and Internet.ba that will be linked on future CoC web site.
- Fulfill remained gaps in following conditions from the Program of activities for realization of priorities in 2004 from the report of the European Commission to the

Council of ministries on the preparedness of Bosnia and Herzegovina for negotiations of SAA with EU:

- 11a Take steps to fully implement the request to record all income accruing to public authorities at different levels of government, including grants and other forms of international assistance.
- 12a Implement the Law on Statistics aiming at the creation of a functioning system of statistics with clear lines of responsibility and coordination mechanisms and especially to appoint director and deputy of the Agency. This Law is of crucial role in future analysis of the economic influence of the competition law.
- 15b Implement a consistent and effective public procurement regime. Right now the EC Delegation Supply Procurement Notice for CoC and OCCP has to be implemented.
- 15d Introduce provisions on the mutual recognition of products in the legal order of BiH and to adopt Program.
- 15 e To create a single business registration system recognized throughout BiH and regulate the harmonization on company formation at BiH level.

#### **b. Long-term recommendations**

- Draft the Law on state aids and provide necessary preconditions for a state aid regulatory authority to function.
- Improve cooperation between CoC and the Supreme Court of BiH as a final instance on CoC decisions.
- Establish the CoC expositors in five economic regions in BiH which will in first time promote and inform public and then start to taking the investigation procedures taking part of the OCCP responsibilities. Taking more responsibilities will need more staff and finance as well as change in Law.
- Create a Competition hot – line where all the potential cases could be introduced anonymously. This can be starting point for the establishing the Bureau for Better Business (BBB) as a moral authority for the business sector in BiH.
- Provide enough money in both the state and entity budgets for financing the activities of CoC and OCCP's.
- Make CoC and OCCP' fully independent agencies without links to any government ministries.
- Link the CoC and OCCP's with the BiH Statistic Agency, Standardization Agency, the Economic Institute and local universities to enhance research and education.

- To establish a customer-oriented mechanism between the private sector and the CoC enabling the common entrepreneurs to access the relevant information related to the area of competitions. The mechanism should be suitable for all businessmen regardless of their place of residence. The system should not multiply the current state administration, but to use the existing channels of local governments as a communication facilitator toward the CoC. One of the existing departments at the LG's level should be assigned with the issues related to the market competition and serve as a communication channel between the private and public sector. The current access to the information is far away from a satisfactory level and it must be improved in order to provide for sustainable system that can maintain its functionality in longer run. Prior to designing the mentioned system an adequate media campaign should take place. The basic goal of the short-term part of the campaign is to raise the general level of awareness on the CoC and the basics of the Law on Competition, as well as key benefits for the stakeholders<sup>85</sup>. The second part of the campaign should introduce the functionality of the mechanism itself in order to promote and maintain the link between the local entrepreneurs and the CoC. The immediate impact of those measures would be increased knowledge about the private and public sector's duties and rights toward the Law on Competition, thus making them stronger stakeholders. That would generate a more visible need for the market regulation. On the other hand, grater need and a broader spectrum of stakeholders make the implementation of the Law more attractive to the political parties and local authorities and therefore, enhance the realization of the process itself. However, this can be linked to the plans for the local branches of Regional Economic Development Agencies in municipalities who should be brought under the municipality administration in next few years.

## **IV Conclusions**

Devising the mission and focus of the CC and DG Comp, which is creating a common economic market, consumer's protection and bringing B&H closer to European standards of competition from the B&H perspective as well as competition of European economy, and consumers protection from the perspective of EU, by comparing political, legal, and institutional conditions which are to enable the CC and DG Comp to conduct their mission, it is possible to make a comparison of CC and DG Comp.

Moreover, through further development of institutes that effect CC in the Competition Law of B&H and tendencies towards its changes, we will notice positive effects of the Regulation EC 1/2003 that concern the functioning of DG Comp and its new powers. It is especially seen on improvements considering the position and methods of work of CC that are offered in new proposal of Competition Law.

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<sup>85</sup> This seems to be necessary because the recent surveys show that people are not familiar with the basic concepts of the Law. According to the same polling a considerable amount of people is not aware of the very existence of the CoC and its competencies. Source: EC

CC has the chance to become one of the most important institutions in the economy and business-life of Bosnia and Herzegovina because it will have a great and difficult assignment to change and correct, not only the approach to business, manufacture and distribution of products and services, and placing it within the boundaries we would have to respect if we wish to enter EU, but also the challenge and opportunity to alter the mentality of local businessmen. On top of this, the CC will also face the task of changing the mentality and practice of all those who consciously do business by walking on the thin line of criminal activities, or acting under the protection of powerful political structures or figures.

In the end, it is always important to show their results. It is not possible to compare the Court decisions, for there are none made in Bosnia and Herzegovina concerning the competition, nor the influence they have on business. What is important is whether the system established in the Law, enables them to be implemented as such.

The first thing that we can notice in this comparison is that CC and DG Comp, although in different positions, they have the same mission and focus. This versatility in position was something realistic to be expected considering the micro-level of implementation of rules of the competition as CC's responsibility, and the macro-level, which is a trademark of DG Comp. Another aspect of their position is whether it is appropriate and sufficient, good or bad. The most prominent figures in DG Comp are now much more pleased with their position and new powers invested in them by the EU Council, by which they gained more authority and more possibilities to improve their work. In Bosnia and Herzegovina we see that the institutions for competition (CC B&H and The Offices for Competition and Consumer's Protection in entities - OCCP) still suffer the consequences of having to divide all institutions into two separate bureaus following the state structure, as well as ethnic distribution of positions. Another kind of obstacles are tendencies of certain politicians to create a make believe of increasing centralization and strengthening the state institutions, as well as tendencies of the others to obstruct the competition, not out of politics and ideas, as out of personal gain for certain groups that stand behind such political decisions. The reality of B&H is, that, regardless of its progress, its economic space is still divided in theory and in practice. The GDP of a state is calculated as the sum of GDP of Republic of Srpska and GDP of the Federation of B&H, just as «Nektar» beer cannot be bought in Sarajevo and «Sarajevsko» beer cannot be bought in Banjaluka.

Current B&H Competition law<sup>86</sup> regulates usual situations, such as Forbidden Agreements, Monopoly Practices, using dominant position and concentrations. However, there are no state aid regulations and most of the enterprises are still state owned due to the slow process of privatization. Entity governments still contribute and help those companies on different ways putting them in better position. In the new law proposal there are new articles 25. and 26.<sup>87</sup> dealing with this important issue:

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<sup>86</sup> The Competition Law of B&H. Official Gazette of B&H No. 30/01, December 18<sup>th</sup> 2001.

<sup>87</sup> Heinrich Holzler. Competition Policy and Law in Bosnia and Herzegovina. EC Delegation in B&H, Sarajevo, 2004.



Right now, two important laws are in front of National Assembly of RS and Parliament of F B&H: The Law on Public Enterprises of RS that should be adopted soon and the Law on Public Enterprises of F B&H that should be adopted in September this year. These laws are supposed to begin tightening regulations on state aids.

While speaking of the institutional framework it is easy to see that DG Comp is one of the cogwheels in well-functioning mechanism<sup>88</sup> (although a bit slow), for it is only one specialized institutional segment for achieving goals from the Treaty on EEC and EU within the European Commission.<sup>89</sup> DG Comp maintains the contacts with and coordinates its activities with the other DG's and institutions of EU through European Commission or independently. CC B&H should connect and coordinate with business chambers (14 of them), the Association for Consumer's Protection (also new and relatively weak association), the Statistics Agency, the Agency for Standardization, Measurement and Patents (which is itself divided) and with the judicial system which is going through a difficult and very slow reform, and especially with the Supreme Court of Bosnia and Herzegovina, established just few months ago.

Thus, we must emphasize that the entire infrastructure for the implementation of the rules of competition in B&H is still in the early phases of development. Especially with the respect to the understaffed CC and OCCP, it is important to devise the improvements and further developments when considering the scale of tasks that are ahead of these nascent organisations.

Again for the sake of perspective, it is important to bare in mind that the reform of DG Comp began five years ago, but was only enforced May 1st this year, but DG Comp was active prior to that date. The problem in B&H is that many important preconditions, such as «The Suggestion of the Decision About the Important Questions Concerning the Competition Law» have long awaited adoption by the B&H Parliament, and without these preconditions and some of the vital financial resources CC and OCCP can not be expected to function efficiently and effectively. The fact that DG Comp is incorporating a separate advisory department consisted out of economists is praiseworthy. Unfortunately, as yet B&H lacks a meaningful institutional link between scientific theory (economic, legal and organizational) and bodies the responsible for implementing the competition policy nor with the Supreme Court as a second interpreter of the meaning of the regulations and as some sort of a pointer which makes the position and the way of work of CC in relations to DG Comp even more difficult.

Examining for a moment the place of the ordinary consumer, it is important to note that the consumers and their associations before the national institutions for the competition as well as before European Commission and DG Comp have no *locus standi* as a third party in the questions concerning competition law<sup>90</sup>. These associations in B&H have even worse position since there is almost no promotion of the consumer's rights

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<sup>88</sup> Misita, Nevenko. Osnovi prava Evropske Unije, Magistrat, Sarajevo, 2002. str. 420-422.

<sup>89</sup> Borchart, Klaus-Dieter. The ABC of Community Law, European Commission, Directorate General for Education and Culture. Office for official publications of European Communities, Brussels, 2000. str. 44-47.

<sup>90</sup> Bovis, Christopher. Business Law in the European Union. Sweet & Maxwell Ltd. 1997. str. 95.

guaranteed by the Law of the Protection of the Consumers in B&H.<sup>91</sup> Here as well, we have a complete division of the institutions and associations and 12 cantonal entity laws about consumers protection while state law remains even less recognized and implemented than the already poorly implemented cantonal and entity laws.

This view is not an optimistic one, but over the long-term there may be reason for hope if progress can follow the trend of the DG Comp. It is obvious that the road towards EU accession is a long one. The road that we as a country will travel during this time of reform will not lead B&H into Europe, but rather this road will bring European standards into B&H and depend upon government officials and citizens of B&H for implementation. Implementation of these standards with respect to competition and state aids especially will be long and burdensome path. We may indeed be forced to embark upon this road running due to the circumstances, and that may be the most reasonable source of hope in this picture.

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<sup>91</sup> Zakon o zaštiti potrošača u Bosni i Hercegovini, Savez potrošača BiH. Sarajevo oktobar 2002.

### **List of abbreviations and acronyms**

BiH	Bosnia and Herzegovina
BC	Bulldozer Committee
CARDS	Community Assistance for Reconstruction, Development and Stabilization
CoC/CC	Council of Competition
CSP	Country Strategy Paper
DG	Directorate General of the European Commission
DG Comp	Directorate General for Competition
DG Relex	Directorate General for External Relations
EC	European Commission
ECN	European Competition Network
ECJ	European Court of Justice
EICC	European Info Correspondence Center
EU	European Union
EURED	EU Regional Economy Development Project
FTCC	Foreign Trade Chamber of Commerce
KM	Convertible marka
LoC	Competition Law
MIP	Multianual Indicative Program
OHR	Office of the High Representative
OCCP	Office of Competition and Consumer Protection in the entities
OECD	Organization for economic co-operation and Development
RAK	Regulatory Agency for Communications
SAA	Stabilization and Association Agreement
SES II	Single Economic Space – Phase II
SEEbiznet	South East European business Network
SME's	Small and medium enterprise
UNCTAD	United Nations Conference on Trade and Development

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Interview with Mr. Emir Djikic, EC local consultant on Competition Policy Project. August 2004.

Interview with Ms. Emira Kadric, Advisor in the Economic Department of the EC Delegation in BiH. August 2004.

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Interview with EU Red consultant for small and medium enterprises.

Interview ( by phone) with Ms. Maja Rimac, responsible officer in the Directorate for European Integration of BiH, August 2004.

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<http://europa.eu.int/comm/competition/antitrust/legislation>

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